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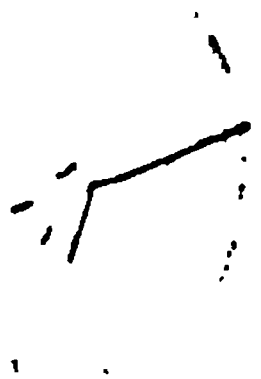
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JOHN J. TREACY,

JOHN W. SLOCUM.

REPORTS

OF THE

Board of Public Utility Commissioners

OF THE

STATE OF NEW JERSEY

VOLUME IV.

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Only such Findings and Decisions are included as in the judgment of the Board come within the scope of Section 7.

This volume should not be confused with the report which, under Section 14 of the Act, the Board is required to make to the Governor annually.

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BELL ELECTRIC MOTOR COMPANY

VS.

PUBLIC SERVICE ELECTRIC COMPANY.

Current supplied electric motors at complainant's factory is charged for in accordance with the respondent's retail rate for power. Complainant has an electric sign and a number of lights used for testing coils and at times for furnishing lights to machines. Complaint is made because the respondent has notified the petitioner that the use of current from the motor generating set for lighting purposes will have to be discontinued unless arrangements are made to pay for current used by the motor at the regular lighting rates. The Board finds that to allow the complainant to obtain lighting service at power rates would be an unjust and unreasonable discrimination against other lighting customers.

C. M. Coddington and P. Q. Oliver, for the petitioner.

L. D. H. Gilmour, for the Company.

From the complaint made by the Bell Electric Motor Company in this case, it appears that the petitioner is operating a factory at Garwood, New Jersey, using approximately 25 horse-power motors which are supplied with current by the Public Service Electric Company. Service is being paid for in accordance with the Standard Uniform Retail Power Rate.

In the construction of the product turned out by this company, it is necessary to use direct current for testing purposes, and on this account the petitioner has installed a direct current generator driven by alternating current motor, which in turn receives current from the Public Service Electric Company's line. The direct current is also used, in addition to testing, for a limited amount of battery charging and for electric lighting.

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It was testified that, in addition to the motors installed, there was an electric sign on the roof of the building, and a number of lights used for testing coils, which were also used, however, for furnishing light at the machines at certain times. These lamps appear to be eleven or twelve in number, and on account of the testing work, direct current is essential.

It was testified that the electric sign operated from dark until 11 or 12 o'clock at night, or, in other words, during the usual lighting hours.

Current for the sign and for the testing lamps was furnished from the motor generator set.

Complaint arises because the respondent has notified the petitioner that the use of current from the motor generating set for lighting purposes will have to be discontinued unless arrangements are made to pay for current used by the motor at the regular lighting rates.

The facts in this case are not in dispute and it merely becomes necessary to pass upon the application of the rate schedules.

Rates for electric lighting service must take into account the effect which such service has upon the peak load of the plant.

The conditions governing rates have been gone into in considerable detail in a memorandum on the minimum charge for electric lighting issued by the Board in 1912. There it was stated that costs of furnishing all service readily fall into three general classes:

(1) Those which are proportional to the number of customers;

(2) Those which are proportional to the maximum demand made by the consumer at the time of the maximum load upon the plant;

(3) Those which are proportional to the number of kw-hrs. used.

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The first class of costs is readily understood and amounts to approximately \$10 or \$12 per annum.

The proper proportion of the second class of costs to be charged against any particular customer will depend very largely on the time of day when such demand for service occurs.

It is well understood that the maximum demand or peak load upon the ordinary generating plant is caused by the lighting load, and rates of charge take into account the fixed charge based upon the capacity of the plant.

In the early days of the electric lighting industry, generating plants operated only from dusk to midnight, or at most from dusk to daylight the next morning. Later, electric current was sold for the operation of motors, and as the fixed charges were ordinarily covered in the rate charged for electric lighting the rates charged for power used in ordinary day-light hours were less by the amount of the fixed charges.

As the electric power business has grown, the rates for electric lighting have been reduced, due to better operating efficiency and to the sharing of the fixed charges by the power customers, to a greater or less extent.

In no case, however, does it appear that the peak load upon the plant caused by the power has exceeded the peak caused by the lighting load.

It appears that the company has provided a special supplement to its regular power schedule, which allows customers having more than 50 h. p. to supply themselves with light, providing the total lighting does not exceed 50% of the connected load. (The total connected load is 21.5 h. p. (Test., May 26, 1915, p. 21); the lighting load is about 3 kilowatts, or about 1/6 of the total load.)

Clearly, the Bell Electric Motor Company does not come under the class of customers to whom the special conditions pertain.

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The only question remaining, then, is whether the charge for service supplied to the electric sign should be at the lighting rate or the power rate.

Testimony of May 26th, 1915, p. 6, was to the effect that the sign was lighted about dark and runs until about 11 o'clock; that there were "possibly six or seven lamps" used for ordinary illumination, and that twelve girls were provided with leads for testing polarity.

It was further testified, p. 6, that the leads of the testing lamps are hooked together, and the lights used for illumination after dark.

To allow the Bell Electric Motor Company to obtain illumination service at power rates would be an unjust and undue discrimination against other lighting customers. Service for the electric sign and for the ordinary factor illumination, whether furnished directly from the mains of the Electric Company or through the medium of a motor generator set, should be charged in accordance with the regular lighting schedule.

In view of the fact that direct current is necessary for testing out of coils, and that such testing is done at the machines where the coils are wound, it does not appear improper to utilize the same lamps for illuminating purposes, and under all the circumstances, the Board does not think it is requisite that the testing lamps be classed as "lighting."

It will be to the advantage of the Bell Electric Motor Company to have the sign and the ordinary office lighting supplied directly from the company's mains, and a separate meter should be installed by the company for this purpose and current supplied through this meter charged for at the regular lighting rates.

The complaint is, therefore, DISMISSED, and an order to this effect will enter.

Dated July 27th, 1915.

Train Service P. R. R. Co.—Trenton and Long Branch.

ORDER.

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

IT IS ORDERED that the complaint in this proceeding be, and it is hereby DISMISSED.

Dated July 27th, 1915.

No. 292.

IN THE MATTER OF THE TRAIN SERVICE OF THE PENNSYLVANIA
RAILROAD COMPANY BETWEEN TRENTON AND LONG
BRANCH AND INTERMEDIATE STATIONS.

The law contemplates that orders of the Board affecting service afforded by railroad companies shall be based on evidence reasonably supporting the same. In this proceeding it does not appear to the Board that it would be justified in finding that the railroad company fails to provide adequate service between the points under consideration.

Wm. A. Stevens, for Long Branch.

Clarence E. F. Hetrick, for Asbury Park.

Wm. E. McDonald, for Bradley Beach.

H. G. McMurtry, for Freehold.

Walter Antrim, for the Pennsylvania Railroad Company.

Train Service P. R. R. Co.—Trenton and Long Branch.

On receipt of a number of informal complaints the Board initiated a hearing on the changed schedule of the Pennsylvania Railroad Company, effective June 30th, 1915, on points between Trenton and Long Branch and intermediate stations and gave public notice of such hearing.

The new schedule provides afternoon train service from Trenton to the seashore at 1:17, 3:57, 4:35 and 5:20 P. M. daily with an additional train on Saturdays at 7:00 P. M.

Train 284, which formerly left Trenton at 6:15 P. M., was dropped.

Much of the informal complaint to the Board was directed against the advance of a popular afternoon train for commuters from 4:15 P. M. to 4:35 P. M., because it made later the times of arrival at the seashore resorts of commuters from Trenton. The railroad claimed that the change was in favor of a majority of those using the train and was acceptable to them.

At the hearing no individual complainants appeared, and the only protests were of an official nature from representatives of the municipalities of Long Branch, Asbury Park, Bradley Beach and Freehold. Freehold desired that train 291, which is an express in the morning from Sea Girt to Princeton Junction, be ordered to stop at its station. This had never been done in the past. The Board is of the opinion that to make this stop would result in inconvenience and loss of time to a much larger number of passengers than would be benefited. The representatives from the shore district had no particular complaint against the trains as now scheduled, but in a general way insisted that there should be at least one additional express train running daily in each direction between Long Branch and Trenton.

The definite demand made by them was that train 284, which under the old schedule was part of the regular service between Trenton and Long Branch, should be restored,

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or that the present train No. 268, leaving Trenton at 7:00 P. M., on Saturdays only, should be operated daily.

It seems to the Board in view of the fact that a train now leaves Trenton at 5:20 P. M. daily, there is doubt whether there would be from Trenton and points east thereof sufficient traffic to justify a requirement that the 6:15 train shall be operated.

There was no request from Trenton for a train to leave there daily, later than 5:20 P. M. and no testimony was submitted to show that the use of such a train would be sufficient to justify its operation. The law contemplates that orders of the Board affecting the service afforded by railroad companies shall be based on evidence reasonably supporting the same, and orders not so based will not, on appeal, be sustained by the Courts.

It does not appear to the Board that it would be justified in finding that the railroad company fails to provide adequate service between the points under consideration on its summer schedule now in effect, and no order will issue requiring such schedule to be changed.

Dated July 27th, 1915.

No. 293.

TOWNSHIP OF ACQUACKANONK

VS.

ERIE RAILROAD COMPANY

AND

APPLICATION OF ERIE RAILROAD COMPANY FOR PERMISSION TO
ABANDON CLIFTON FREIGHT STATION.

The petitioner asks inter alia that the Board order the Erie Railroad Company to move its station at Clifton to a point which it is claimed

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would be more convenient. The removal of the station would involve a cost of between \$7,000 and \$10,000. Upon all the testimony, the Board concludes that it would not be warranted in requiring this expenditure for a purpose which involves convenience, merely, when there are more urgent matters, involving safety, which probably would be necessarily postponed if funds are to be used for work demanded neither by safety nor adequacy of service.

A railroad company should have convenient and safe approaches to its stations. A stairway upon which snow and ice are allowed to accumulate is not safe, adequate and proper service, and coverings for such stairways should be provided.

It is shown that an approach to a freight house is difficult and that it is inconvenient to back wagons to the door of the freight house because of a steep grade. The Board finds that a suitable approach should be made to the freight house, and a level surface provided upon which wagons may be placed in such proximity to the freight house that freight may be handled directly from the freight house to the wagon.

W. B. Gourley, for Township of Acquackanonk.

D. E. Minard, for the Erie Railroad Company.

This matter was originally brought to the attention of the Board on the complaint of Lester F. Meloney of Clifton, New Jersey. Subsequently, upon leave of the Board, the Township of Acquackanonk filed a complaint which covers the grounds, among others, urged in the Meloney complaint. Relief is demanded with reference to five matters complained of. The prayer of the Township's complaint is that this Board will order the Erie Railroad Company

(1) To remove the station at Clifton to a point on its line that will be more convenient for the traveling public; or

A. To place an additional man at said station to permit passengers to pass through the gate in the intertrack fence.

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B. To direct that said gate be opened by the agent of the Company now in charge of said station at such reasonable times as shall be required to permit passengers to pass through.

(2) To erect a covering or shed over the cinder platform on the east side of said tracks for the protection of the passengers.

(3) To erect a covering over the steps leading to both platforms.

(4) To erect a suitable and commodious freight house at said station that will properly house the local freight.

(5) More sanitary lavatory conditions.

After the case had proceeded to hearing the Railroad Company filed a petition requesting permission to remove the freight station from Clifton, the result of the granting of which request would be to compel all persons who desire to ship less than car-load lots of freight from Clifton to go to the Passaic station about a mile away.

Since the filing of the original complaint, the Railroad Company has erected a covering or shed over the cinder platform on the east side of its tracks thus eliminating from the case the second ground of complaint upon which relief was asked.

Taking up the first request of the petitioner's, namely, that the station be removed to a more convenient point for the traveling public; that an additional man be placed at the station to permit passengers to pass through the gate in the intertrack fence; or that the agent at the station be required to perform this duty, it appears that the station is located on the west side of the tracks or what is known as the east-bound track side. It is 320 feet from Clifton Avenue, which runs under the tracks. Passengers for points west of Clifton desiring to purchase tickets at the station

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are required to go from the station to Clifton Avenue, then under the tracks to the east side or west-bound track and then ascend a stairway. It is urged that this distance of 320 feet is more than passengers should be compelled to travel and that the station should be removed to Clifton Avenue or that the gate in the intertrack fence should be open whenever passengers desire to pass from the station to the west-bound track.

The only persons that we can find who suffer any inconvenience from the existence of the intertrack fence are those who come from the westerly side of the tracks to the easterly side to take the west-bound trains. It certainly is not inconvenient for persons who desire to take the east-bound trains because the station is on the east-bound track side. The testimony shows that from seven o'clock in the morning until seven-thirty o'clock in the evening only twenty-one persons took west-bound trains. Assuming that all these persons came from the other side of the tracks, the number inconvenienced is not large.

It would not, in our view, create such a condition of public necessity and convenience as to imperatively require the removal of the station. The removal of the station would involve a cost of between \$7,000 and \$10,000. Upon all of the testimony, the Board concludes that it would not be warranted in requiring this expenditure for a purpose which involves convenience, merely, when there are more urgent matters involving safety, which probably would be necessarily postponed if funds are to be used for work demanded neither by safety nor adequacy of service, nor urgently required by considerations for convenience; some of which work, such as the elimination of grade crossings and the straightening of bridges and other structures, has been required by this Board. Nor do we think the Railroad Company should be compelled to hire an additional

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man to attend the gate in the intertrack fence for the purpose of opening it to allow passengers to go from the station across the tracks to the west-bound trains. Nor do we think, in view of the testimony, that the agent in charge of the station, who appears to have various duties to perform, should be compelled in addition to attend this gate and open it every time a train stops at the station. The greatest inconvenience that these twenty-one persons are put to is the walk of an additional three hundred and twenty feet. We think that this inconvenience is offset by the possible danger of an opening in the intertrack fence to permit persons to cross the tracks. While it appears that about 200 persons leave the west-bound tracks at this station and proceed to the other side of the track we can see no reason based upon convenience or necessity requiring, in our judgment, the opening of the intertrack fence for their benefit. They are, for the most part, returning from business to their homes; a minute more or less would not greatly inconvenience them, and of the 200 apparently about 85 would be all that would save the traveling of the 320 feet by the opening of the gate in the intertrack fence. While some of the twenty-one west-bound passengers may have need of going first to the station to purchase tickets and thence to the Clifton Avenue subway to the west-bound side, and suffer some inconvenience thereby when pressed for time to catch a train, no such argument can be advanced in favor of the passengers leaving the west-bound trains at this station. The purpose of an intertrack fence is the lessening of the possibility of accidents by preventing people from crossing the tracks. This Board has not infrequently recommended the installation of such a fence. It does not consider that under ordinary conditions the opening of a gate in such fence for the passage of patrons over tracks is safe practice. The circumstances under which it will

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make such order must be such as to cause extreme inconvenience to the traveling public. Great, indeed, should be the public convenience that would counterbalance the loss of a life or a limb or the possibility thereof.

The third request for relief is that the railroad company be directed to erect a covering over the steps leading to the platforms on both sides of the track. The testimony shows that these steps in the winter time are not properly protected and accumulations of snow and ice are not removed with sufficient promptness. It appears that the man in charge of the station is charged with the duty of removing snow and ice on these steps and that he can only do so when his other duties have been attended to. The demands upon his time by these other duties at times cause the removal of snow and ice from the steps to be neglected. If a section gang is working at or near the station it may or may not clean the steps, there being no apparent requirement that it do so. A railroad company should have convenient and safe approaches to its station. A stairway upon which snow and ice are allowed to accumulate is not in our judgment safe, proper and adequate service and as the testimony is to the effect that a covering over these stairways would furnish protection in these respects to passengers and persons lawfully using the station facilities, we conclude that such covering should be erected and will direct that coverings for both platforms be constructed by the railroad company.

The fourth prayer of the complaint is that a suitable and commodious freight house be erected at said station, that will properly house the local freight. This prayer will be considered in conjunction with the railroad company's request that the freight station be removed from Clifton. It appears that the freight house consists of two freight cars located on the railroad embankment on the east side of the

Township of Acquackanonk vs. Erie R. R. Co.

tracks. It has been in use for several years. The population of Clifton is increasing rapidly. The passenger service from this station according to the testimony of one of the railroad company's witnesses has increased at the rate of twenty per cent. a year. The population of the municipality is over 5,000. The nearest freight station to Clifton is at Passaic, about a mile distant. The business done in less than carload lots alone for the last five fiscal years and part of the present year is as follows:

For fiscal years ending June 30th:						July to Mar.
Less Carload	1910	1911	1912	1913	1914	1915 inc.
Received.....	1,085.35	1,244.24	1,125.92	1,363.81	1,588.17	1,223.53
Forwarded....	568.42	489.34	307.91	189.16	678.33	294.63
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total LCL....	1,653.77	1,735.58	1,433.83	1,552.97	2,266.50	1,518.16

We think the tendency of the business is to increase and that under these conditions this community should not be deprived of a freight station and therefore deny the petition of the railroad company for the removal of it. On the other hand, we do not believe that the amount of freight business done at this place is such as to require the construction of a new and more commodious freight house and deny the prayer of the Township and its associate petitioners in that respect.

The testimony showed that the approach to the existing freight house is difficult and that it is inconvenient to back wagons to the door of the freight house because of the steep grade. We think that the railroad company should provide a level place for wagons so that freight may be transferred easily from the freight house to a wagon without carrying such freight down the bank. We find that its failure to do so is not the rendering of adequate and proper service. We will, therefore, direct that a suitable approach be made to the freight house and a level surface provided

Knickerbocker Ice Co. et als.—Merger.

at said freight house upon which wagons may be placed in such close proximity to the freight house door that freight may be handled directly from the freight house to the wagon.

The fifth ground of complaint is that more sanitary lavatory conditions be ordered. While the testimony on this matter is in direct conflict we are inclined to the opinion that proper sanitary precautions have not been taken by the railroad company and recommend that the company give immediate attention to these conditions.

Dated July 27th, 1915.

No. 294.

IN THE MATTER OF THE APPLICATION OF THE KNICKERBOCKER
ICE COMPANY, ICE MANUFACTURING COMPANY AND INTER-
BOROUGH ICE COMPANY FOR APPROVAL OF MERGER.

In the instant case what is sought to be accomplished is the dissolution of the two New York corporations by merging them into the New Jersey corporation. No agreement of merger and consolidation has been adopted by the companies, as required by the New Jersey Statute, and none is proposed. The Board is without authority to approve the proposed merger. The application is dismissed.

Frank R. Savidge, for petitioners.

Application is made by Knickerbocker Ice Company, a New Jersey corporation, and Ice Manufacturing Company and Interborough Ice Company, New York corporations, for the approval of this Board, under Chapter 19, Laws of 1913, of the merger of the three corporations.

Hearing was held August 10th, 1915, at the State House, Trenton.

It appears that the New Jersey corporation, Knickerbocker Ice Company, owns all of the outstanding capital

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stock of both of the New York corporations, Ice Manufacturing Company and Interborough Ice Company, and it is proposed to merge the two latter companies into the Knickerbocker Ice Company, by filing in the Office of the Secretary of State of New York the certificate required by the New York statute. Upon the filing of a certificate setting forth that a domestic or foreign corporation owns all of the capital stock of a domestic or foreign corporation, a merger of such corporations is effected.

The provision of the statute of New York is as follows:

Section 15, of the New York Stock Corporation law, reads as follows:

“Any domestic stock corporation and any foreign stock corporation authorized to do business in this State lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar, or incident to that of the possessor corporation, may file in the Office of the Secretary of State, under its common seal, a certificate of such ownership, and of the resolution of its Board of Directors to merge such other corporation, and thereupon, it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely, without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the Board of Directors of such possessor corporation, and in its name, but without prejudice to any liability of such other corporation or rights of any creditors thereof.

“Any bridge corporation may be merged under this section with any railroad corporation which shall have acquired by contract to run its cars over the bridge of such bridge corporation.”

No such authority exists in New Jersey. Nor is there any statute permitting the merger of a New Jersey corporation with a foreign corporation. To merge and consolidate corporations there must be statutory authority; otherwise no such authority exists.

In *Riker & Sons Co., vs. United Drug Co.*, 79 (9 Buch.) *N. J. Equity*, 580 (1911), Chief Justice Gummere, speaking for the Court of Errors and Appeals, (p. 582) said:

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"The fundamental question now to be decided is whether a corporation of this State, organized under our General Corporation Act, may legally be merged into or consolidated with a corporation created by and organized under the laws of a sister state. The answer to this question seems to us not to be in doubt. As was said by this court in *Colgate v. United States Leather Co.*, 75 N. J. Eq. (5 Buch.) 229, the power of corporations to consolidate and merge is not to be implied, and exists only by virtue of plain legislature enactment; and no statute of our state can be found which authorizes the proposed scheme. The only right given, by our legislature, to two or more corporations to merge or consolidate into a single corporation, is expressly limited to those which are organized under the laws of our own State. Revised Corporation Act, Sec. 104; P. L. 1896, p. 309."

Again the Court said:

"The scheme, in the carrying out of which the dissolution of the company is a proposed step, is a fraud upon the statute (the word is used in a legal, not a moral sense); and every act done in furtherance thereof, no matter whether it be legal, standing alone, or not, is equally a fraud under the statute."

In the instant case what is sought to be accomplished is the dissolution of the two New York corporations by merging them into the New Jersey corporation. No agreement of merger and consolidation has been adopted by the companies, as required by the New Jersey statute, and none is proposed. We are asked to approve the swallowing up by the New Jersey company of the two foreign companies in accordance with the practice laid down by the New York statute.

At the hearing, counsel frankly stated there was no statutory authority for such proceeding. In this situation this Board is without authority to approve the proposed merger. The application is DISMISSED.

Dated September 20th, 1915.

Chester L. Hall et als. vs. Erie Railroad Co.

No. 295.

IN THE MATTER OF THE PETITION OF CHESTER L. HALL, ET
ALS VS. ERIE RAILROAD COMPANY FOR CHANGES IN TRAIN
SERVICE ON THE GREENWOOD LAKE DIVISION.

The Board finds that changes should be made in the passenger train schedule on the Greenwood Lake Division of the Erie Railroad and adopts an order directing the making of such changes.

Fullerton Wells, for the petitioners.

Duane E. Minard, for the respondent.

The petition in this case is signed by Chester L. Hall and others, residents at points along the Greenwood Lake Division of the Erie Railroad, west of Little Falls, and embodies the following specific requests for improvements in train service:

(1) That train No. 510 leaving Midvale at 7:01 A. M. stop at North Newark.

(2) That passengers west of Little Falls be given a morning train to arrive at Jersey City at 8:45 A. M.

(3) That train No. 518 leaving Midvale at 8:21 A. M. stop at Pequannock and Mountain View.

(4) That express trains Nos. 525 and 529 leaving Jersey City at 5:17 P. M. and 5:34 P. M. are too near together.

(5) That train No. 529 stop at Newark.

(6) That a train be scheduled to leave Jersey City between 9:00 P. M. and 10:00 P. M., or that train No. 541 run through to Midvale.

(7) That train No. 503 leaving Jersey City at 12:45 P. M. run through to Midvale.

The trains mentioned in the petition and referred to in the testimony are shown in schedules in effect September 28th, 1914; revised November 20, 1914, and May 30, 1914; revised July 27, 1914.

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Three hearings were held in Newark, January 22, 1915, February 19th, 1915, and April 16th, 1915, which were attended by a large number of residents directly interested in the petition, also residents of other communities, who appeared in opposition to changes affecting existing service at points east of Little Falls.

The requests will be considered in the order in which they appear in the petition.

The first request is that train No. 510 stop at North Newark. The evidence introduced to support this request is directed mainly to the accommodation of residents west of Little Falls who are employed in the city of Newark and desire to reach their places of business at 8:30 A. M. To reach Newark before this hour, under the present schedule, it is necessary to take train arriving at North Newark at 7:26 A. M., practically one hour in advance of the time at which they must reach their respective places of business. The next train from points west of Little Falls is train No. 512, which does not stop at North Newark, and passengers for North Newark take train No. 510 to Montclair, where a change is made to train No. 512, arriving at North Newark at 8:15 A. M.

Petitioners claim this service will not permit them to reach the business district of Newark at 8:30 A. M., as the running time of trolley cars from North Newark Station to Broad and Market Streets, Newark, is about twenty-one minutes.

The commuters of Glen Ridge presented strong objections against stopping train No. 510 at North Newark. This train is known as the Glen Ridge express, and is the only morning train that makes no stop between Glen Ridge and Jersey City. It is also claimed if this stop is made the schedule would be disarranged to such an extent that passengers could not connect with the 8:15 A. M. ferry boat.

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from the Jersey City Terminal for New York. The arrival time of this train is 8:11 A. M., allowing but four minutes between the arriving time and the departure of the ferry boat. The respondent alleges that a stop at North Newark would necessitate an additional coach to take care of the increased number of passengers from North Newark, which would preclude train No. 510 arriving on its scheduled time. The petitioners contend that a considerable number of passengers will use train No. 510 if the stop is made. A canvass by the Chief Inspector of the Board, made on January 25, 26 and 27th, shows that on the first date, four passengers from the earlier train changed at Montclair for train No. 512 to North Newark; on the 26th there were three passengers and on the 27th, four passengers.

To stop train No. 510 at North Newark would unquestionably interfere with its present operating time, and would also deprive Glen Ridge of the only morning express train to Jersey City. Glen Ridge is one of the largest commuting stations on the Greenwood Lake Division, and its desire to protect existing express service must be given due consideration. The request to stop train No. 510 at North Newark will not be approved by the Board.

The second request of petitioners is for a morning train to arrive at Jersey City at 8:45 A. M., which would allow sufficient time to reach the vicinity of the Hudson Terminal in New York at 9 A. M. To accomplish this, it is suggested that train No. 514, during the winter schedule, leave Midvale a few minutes earlier, and during the summer schedule, train No. 512, which leaves Sterling Forest at 7:00 A. M. and makes no stop between Midvale and Little Falls, run as a local west of Little Falls, and express east of Little Falls. The commuters from the Greenwood Lake section seriously object to any change being made affecting this train, which is known as the Greenwood Lake express af-

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fording the quickest morning service; and to make connection with this train at Sterling Forest, the boat connection from Greenwood Lake is now required to leave at 6:00 A. M. To make train No. 512 a local west of Little Falls would eliminate the service at all stations between Great Notch and Orchard Street, Bloomfield, and such change would materially affect the service from these communities. The commuters in the vicinity of Pompton Plains now having five trains in the morning, and the commuters from the Greenwood Lake Section, having only two, is a factor to be considered in connection with the proposed change in the schedule of train No. 512. It is also alleged by the respondent that the proposed change would interfere with the operation of train movements both at the junction point west of the Jersey City Terminal and at the Jersey City Terminal. Considering the claims of the commuters in the Greenwood Lake Section and the operating difficulties which will develop if the schedule of this train is changed, the Board will dismiss the request as to train No. 512.

As train No. 514 is scheduled to run week days throughout the year, arriving at Jersey City at 8:56 A. M., the Board will RECOMMEND that this train leave Midvale sufficiently early to arrive at Jersey City at 8:45 A. M., if compliance with this request would not seriously interfere with the operation of trains over all branches scheduled to arrive at Jersey City about 8:45 A. M.

The third request is that train No. 518 stop at Pequannock and Mountain View. This train leaves Sterling Forest at 7:51 A. M., arriving at Jersey City at 9:28 A. M. There is no service from Pequannock to points east between 7:58 A. M. and 10:43 A. M.; and from Mountain View between 8:04 A. M. and 10:49 A. M. During the summer schedule, this train has boat connections from the Greenwood Lake section, and is practically a local train from Sterling Forest

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to Glen Ridge. From the testimony, it would appear that one stop could be made without undue interference with its running time, and owing to the length of time between trains mentioned above, it would seem that adequate service would require that stops be made at Pequannock and Mountain View. The Board will order that train No. 518 stop at Pequannock; and if it is feasible from an operating standpoint, stop should also be made at Mountain View.

The fourth complaint is that trains No. 529 and No. 525 are scheduled to leave Jersey City too near together. To obtain more space between train No. 525, which leaves Jersey City at 5:17 P. M. and runs to Midvale, and train No. 529, which leaves Jersey City at 5:34 P. M. and runs to Midvale and Sterling Forest during the summer schedule, and to Midvale during the winter schedule a change in the leaving time of train No. 529 is desired, as the difference in the leaving time of these trains is but seventeen minutes, and they are the only express trains running to Midvale at this period of the day. To afford a longer time between the departure of these trains, it is suggested that train No. 529 run to Essex Fells, and that train No. 585, which leaves Jersey City at 5:45 P. M. and runs to Essex Fells run to Midvale. This request should be considered in connection with the fifth request that train No. 529 stop at North Newark, as train leaving Jersey City at 5:45 P. M. for Essex Fells is now scheduled to stop at North Newark. Compliance with the fourth request, and train leaving Jersey City at 5:34 P. M., stopping at North Newark about 5:50 P. M., would allow passengers from North Newark for points west of Little Falls to make connection at Great Notch with train leaving Jersey City at 5:45 P. M. for Midvale.

Respondent alleges that this change might require additional coaches to accommodate the travel, and operation of such trains would be prevented on account of the heavy

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grades. It is not improbable that this change if put in effect, would result in such redistribution of passenger travel of both trains, as to allow their operation with the same number of cars now hauled. Objection is also made by the commuters of Glen Ridge, as train No. 529 leaving Jersey City at 5:34 P. M., runs as an express to Glen Ridge. If the change is made as suggested, the Glen Ridge train would be continued as an express, leaving Jersey City eleven minutes later. While objection to such change may be made by some of the Glen Ridge commuters, it may be acceptable to a considerable number. Train schedules should be arranged as far as possible for the convenience of patrons along the entire line, and as the proposed change will result in advantage to communities west of Little Falls, and not materially affect the service east of Little Falls, the Board will order the re-adjustment of the schedule of train No. 529 and No. 585, above mentioned.

The fifth request is that train No. 529 stop at North Newark. As the Board will order compliance with the fourth request, the Essex Fells train leaving Jersey City at 5:34 P. M. and making the North Newark stop will cover this request.

The sixth request is that a train be scheduled to leave Jersey City between 9:00 P. M. and 10:00 P. M., or that train No. 541 leaving Jersey City at 8:29 P. M. run through to Midvale. There is no testimony bearing on this request, except that of Mr. Hall, who states that after 7:24 P. M. there is no service from Jersey City to Pompton Plains until 11:45 P. M. By reference to time table in effect July 27th, 1914, a train is scheduled to leave Jersey City at 10:46 P. M., arriving at Pompton Plains at 11:56 P. M., which service is afforded during the summer schedule. The testimony as to the necessity for such service is insufficient to warrant compliance with this request.

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The seventh request is that train No. 503 leaving Jersey City at 12:45 P. M. run through to Midvale. The reason for this change is that those attending theatres in New York are unable to reach Jersey City at 11:45 P. M., and it is suggested that train No. 501 leaving Jersey City at 11:45 P. M., now running to Midvale, terminate at Little Falls, and that train leaving Jersey City at 12:45 P. M., now running to Little Falls, be scheduled to run to Midvale, stopping at the intervening stations west of Little Falls. The proposed change is merely a substitution of terminating points of these trains, and their operation in all probability would not involve any additional expense. As these trains are scheduled only one hour apart, no inconvenience can result to passengers using train No. 501; and considering the convenience that a later train would afford residents at points between Little Falls and Midvale the Board will order readjustment of the schedule to provide for the later train running to Midvale.

The changes mentioned in this report are to become effective with the date of the Fall schedule and an Order will be so entered.

Dated July 27th, 1915.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on July twenty-seventh, nineteen hundred and fifteen, made and filed a report, which said report is hereby referred to and made a part hereof, the Board finds and determines that the Erie Railroad Company, in the operation of trains over its Greenwood Lake Division, does not furnish safe,

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adequate and proper service, and the Board finds and determines that safe, adequate and proper service requires, and the Board HEREBY ORDERS the Erie Railroad Company

(1) To stop at Pequannock the train now listed on its schedule as No. 518 regularly each day of the operation of said train;

(2) To run through to Little Falls instead of Midvale the train listed on the company's schedule as No. 501, leaving Jersey City at 11:45 P. M. each day of the operation of said train;

(3) To run through to Midvale, instead of Little Falls, the train listed on the company's schedule as No. 503, leaving Jersey City at 12:45 P. M., each day of the operation of said train;

(4) To re-arrange its schedule of passenger train movements so that the train now listed on its schedule as No. 529, leaving Jersey City at 5:34 P. M., will run regularly on each day of the operation of said train to Essex Fells instead of Midvale and stop regularly each day of such operation at North Newark;

(5) To run to Midvale the train now listed on the company's schedule as No. 585, leaving Jersey City at 5:45 P. M. each day of the operation of said train.

This order shall become effective September eighth, nineteen hundred and fifteen.

Dated August 17th, 1915.

ORDER AMENDING ORDER.

Application having been made to the Board of Public Utility Commissioners by the Erie Railroad Company, for an amendment of the Board's Order dated August 17th, 1915, in the above matter, and the Board believing that such amendment is reasonable and should be granted, the said Board

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HEREBY ORDERS that Sections 4 and 5 of said Order be amended to read as follows:

(4) to re-arrange its schedule of passenger train movements so that the train now listed on its schedule as No. 529, leaving Jersey City at 5.34 p. m., will run regularly on each day of the operation of said train to Essex Fells instead of Midvale.

(5) To run to Midvale the train now listed on the company's schedule as No. 585, leaving Jersey City at 5:45 p. m. and stop regularly each day of such operation at North Newark.

The Board **HEREBY FURTHER ORDERS** that such order shall become effective on the going into effect of the Fall schedule instead of September 8th, 1915.

Dated September 21st, 1915.

No. 296.

IN RE INVESTIGATION OF SERVICE IN THE OPERATION OF MORRIS COUNTY TRACTION COMPANY ON COMPLAINT OF A. M. PIERSON, ET ALS.

The legislature has given this Board the expressed power, after hearing, by order in writing, to require every public utility to furnish safe, adequate and proper service, and to keep and maintain its property and equipment in such condition as to enable it to do so; and also, to establish, construct and maintain any reasonable extension of existing facilities. No expressed or implied curtailment of these powers vested in this Board, appearing in any ordinance granted by a municipality to a public utility corporation is valid.

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A. M. Pierson, A. H. Hassinger and M. W. Faitoute,
per se.

Alfred N. Dalrymple, for the New Jersey Automobile
and Motor Club.

Carl B. Vogt, for the respondent company.

Frank H. Sommer, for the Commission.

Several complaints have been received regarding the operation of cars of the Morris County Traction Company on the Morris Turnpike, between Elizabeth and Springfield Junction. Two investigations of conditions were made by Inspectors of this board, but as the Inspector's recommendations were not acted upon by the company, the matter was set down for hearing before this Board on July 7th at Newark.

There are two trolley tracks, one on either side of the road, but the Traction Company has been operating its cars principally on the track on the south side—the operation thus being a single track operation. There are times, however, when the company operates its cars on each of these tracks in both directions. This operation is very confusing to motorists after dark. The company now proposes to use the track on the north side exclusively for passenger service.

The presence of trolley tracks on both sides of an eighteen foot fairway naturally leads the traveling public to assume there is a double track system in operation. With such an impression in mind the unexpected appearance of a strong, powerful light from the trolley, on the wrong side of the road, is more than confusing. It makes an unnecessary danger to traffic.

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The only reason for operating cars on one track is the saving of expense to the Traction Company. There would be no objection to this if the public is equally well served and the potential danger not increased; but in this instance the danger, to automobilists especially, is materially increased without sufficient justification for it.

The company should operate its cars along Morris Avenue between Union Center and Springfield Junction on its proper tracks, namely, the westbound car on the westbound track and vice versa.

This could be accomplished easily and in a satisfactory manner by constructing a cross-over east of Main Street as shown on Exhibit C-1, and is a practicable operation. It would not involve the expenditure of much money.

In a letter to this Board on March 17th, 1915, the company said:

"We, however, believe that the conditions can be overcome by a cross-over east of Westfield Avenue but as our rights under the ordinance in this respect are rather vague, we are preparing the matter to be submitted to the Board of Chosen Freeholders of the County of Union, whose permission we believe we must first receive. This we hardly expect to be able to accomplish before April 1st, as per recommendation."

At the hearing before us in July the company made no mention of any effort on its part to secure the suggested permission from the Board of Chosen Freeholders of the County of Union, but introduced in evidence an ordinance granted by the said Board of Freeholders to the respondent company, passed November 3rd, 1904, wherein among other things it is provided:

"That no turnout shall be more than 300 feet in length, nor within 2,000 feet of any other turnout on the same; nor shall there be any turnout or switch between Meeker's Inn and Summit City Line except at Main Street in Springfield Township."

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as an obstacle preventing the construction of the desired cross-over.

It is doubtful if the vague and ambiguous language quoted from the ordinance is applicable to the suggested construction of a cross-over. If by any strained construction it could be so argued, as between the said Board of Freeholders and the Traction Company, it cannot be used as a barrier preventing this Board from ordering the company to make reasonable extensions of its existing facilities.

The legislature has given this Board the expressed power, after hearing, by order in writing, to require every public utility to furnish safe, adequate and proper service, and to keep and maintain its property and equipment in such condition as to enable it so to do; and also, to establish, construct and maintain any reasonable extension of existing facilities.

No expressed or implied curtailment of these powers vested in this Board, appearing in any ordinance granted by a municipality to a public utility corporation is valid.

It will, therefore, be ordered that the Morris County Traction Company put both tracks in proper operating condition, that it operate its eastbound cars on the eastbound track and its westbound cars on its westbound track between Union Center and Springfield Junction, and to accomplish such a desired operation, that it construct a cross-over in Morris Avenue, east of Main Street in the Township of Springfield.

The Board recommends that the powerful trolley lights now in use on the cars of the company be dimmed on all public highways.

Dated September 21st, 1915.

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ORDER.

The Board of Public Utility Commissioners, after investigation and due hearing of several complaints against the Morris County Traction Company, regarding the operation of cars on the Morris Turnpike between Elizabeth and Springfield Junction, having filed a report containing its findings of facts and conclusions thereon, which said report is hereby referred to and made a part hereof, now determines that the said company does not furnish safe, adequate and proper service and does not maintain its property in condition to furnish such service in the respects indicated by said report, and

HEREBY ORDERS the Morris County Traction Company to put its tracks along Morris Avenue, between Union Center and Springfield Junction, in proper operating condition, and operate its eastbound cars on the eastbound track, and its westbound cars on the westbound track between said Union Center and Springfield Junction, and

The Board HEREBY FURTHER ORDERS the Morris County Traction Company, in order to accomplish this operation, to construct a cross-over in Morris Avenue east of Main Street in the Township of Springfield.

This Order to become effective October 15th, 1915.

Dated September 21st, 1915.

Monmouth County Electric Co.—Roadbed.

No. 297.

IN RE NON-COMPLETION OF RECOMMENDATIONS MADE TO MONMOUTH COUNTY ELECTRIC COMPANY CONCERNING ITS ROADBED IN LONG BRANCH, NEW JERSEY.

REPORT AND ORDER.

William A. Stevens, for Long Branch.

James D. Carpenter, for Monmouth County Electric Company.

Complaint was made by the City of Long Branch December 15th, 1914, concerning the non-completion of various improvements previously recommended by this Board to the Monmouth County Electric Company as necessary. The matter was taken up by the Board's Inspector and relying upon the promises made by officers of the company the matter was continued until June 2nd, 1915, when it was set down for hearing.

On the date last mentioned William F. Hogan, President of the said company, appeared and gave testimony. He agreed that the recommendations of this Board were necessary and proper, and stated his desire to have the same carried out as speedily as the financial condition of his company would warrant. In this situation and in the expectation that from the increased earnings of the summer business these repairs would be made, the making of the report has been purposely delayed.

The crossings in Liberty Street and Washington Street have been bricked but instead of the eighteen inches outside the rails being also bricked they are guarded by a plank twelve inches in width. This is not good workmanship.

Monmouth County Electric Co.—Roadbed.

The Grand Avenue crossing has been partly improved and some other small work completed.

The matter of resurfacing Union Avenue with macadam and Hampton Avenue with gravel between the trolley tracks and eighteen inches each side, may rest for the present but the condition of Branchport Avenue demands immediate attention.

From the depositions and exhibits before us and a personal inspection of the location complained of, we find the trolley tracks come out of Russell Avenue into Branchport Avenue and run north a distance of approximately two hundred feet before turning into Hampton Avenue. At this point the roadbed between the trolley tracks and for eighteen inches each side thereof is almost impassable. Horses and carriages only venture over it on a walk and for automobile traffic it is unsafe.

This condition in a much traveled public highway ought not be tolerated and should be called to the attention of the Grand Jury of Monmouth County.

The officers of the company have repeatedly promised to correct this public nuisance but having failed, it is therefore ORDERED that the Monmouth County Electric Company place the brick pavement in Branchport Avenue, Long Branch, between its rails and eighteen inches on either side thereof in safe and proper repair for public travel over it from a point opposite the southerly line of Russell Avenue to a point opposite the northerly line of Hampton Avenue.

This order shall take effect October 15th, 1915.

Dated September 21st, 1915.

Crossing of Tracks, P. R. R.—Lavallette.

No. 298.

IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF
LAVALLETTE FOR PERMISSION TO CROSS THE TRACKS OF THE
PENNSYLVANIA RAILROAD AT GRADE AT PRESIDENT
AVENUE.

John H. Switzer, for the petitioner.

J. F. Chandler, for the respondent.

There is a crossing at grade at Reese Avenue within two hundred feet of the proposed crossing. President Avenue on both sides of the railroad tracks is unimproved. While there are six houses on the west or bay side of the tracks, three of these are unoccupied. It is for the convenience of the occupants of these houses that the proposed crossing is asked. There are at least ten train movements over the crossing daily.

We cannot see any urgent public need for this crossing, at the present time, and will, therefore, dismiss the application.

Dated September 28th, 1915.

Kearny vs. Erie R. R. Co.

No. 299.

TOWN OF KEARNY

VS.

ERIE RAILROAD COMPANY.

The Board concludes that a condition of danger exists at the crossing of Grant Avenue, Kearny, and the track of the Newark branch of the Erie Railroad warranting an order directing additional protection at the crossing.

Clyde D. Souter, for petitioner.

Duane E. Minard, for respondent.

The Town of Kearny filed a petition alleging that Grant Avenue is one of the principal highways of said town and crosses the Newark Branch of the Erie Railroad at grade; that train operations are guarded only between the hours of 7 A. M. and 7 P. M. by gates; that trains are regularly operated east and west across Grant Avenue daily between the hours of 7 P. M. and 1 A. M. and that besides these regular trains freight trains are operated east and west across said avenue; that said crossing is dangerous to public safety because the gates are not operated after 7 o'clock P. M. The Erie Railroad time table, which was put in evidence, shows trains going west through Kearny at the following times: 7:06 P. M.; 8:10 P. M.; 10:45 P. M.; 12:45 P. M.; and trains going east through that town 7:14 P. M.; 8:40 P. M.; 9:55 P. M.; 11:17 P. M. This agrees with the record of traffic taken by a witness for the petitioner. In addition to these regular trains there are a few switch movements each night over this street. The record of such switch movements from January 11th to January 15th, 1915, showed that the largest number was 6 and the smallest number 2. These movements usually take place before 1 o'clock A. M.

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According to this witness there is also one freight train passing through the town every night after 1 o'clock A. M. The testimony also shows that from the hours of 7 P. M. to 6 A. M. during the five days mentioned the lowest number of pedestrians using this crossing was 335 and the largest number 1,051. Of this number about 97% use the crossing before 1 A. M. The lowest number of automobiles and other vehicles was 20 and the highest number 38. The photographs introduced in evidence indicate that 3 of the 4 corners on Grant Avenue at the crossing are built upon and have obstructions which prevent a view of the tracks at these points.

The respondent denies that it is necessary to have the gates operated after 7 o'clock P. M. or that a flagman be stationed at the crossing after that hour. It introduced testimony showing that westbound trains stop at Kearny Street station 760 feet east of Grant Avenue and run at slow speed over the Grant Avenue crossing in order to run at a restricted speed over the drawbridge which is 1,206 feet west of the Grant Avenue crossing; that the speed limit on that bridge is six miles an hour and that this limitation affects the speed of eastbound trains as well as westbound, causing the rate of speed to be slow at the Grant Avenue crossing for trains both east and westbound.

The respondent also introduced a map which indicates that to a person proceeding north on Grant Avenue the view to the east approaching the crossing at a point 51½ feet from the nearest rail of the eastbound main track is 496 feet; at 34 feet 10 inches from said nearest rail 768 feet; and at 32 feet 10 inches from the nearest rail of the westbound track, 1,300 feet, while the view to the west at the aforementioned point 51½ feet from the nearest named track is 1,400 feet; that the view which a person has proceeding south on Grant Avenue to the crossing at a point

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41 feet and 8 inches from the nearest rail of the eastbound track towards the west is 791 feet; that the view 25 feet 4 inches from the nearest rail of the westbound main track toward the east is 1,230 feet; that there is a crossing sign of the standard type at the crossing and also a crossing bell, which was recommended by an inspector of this Board.

It appears from the plan introduced by the respondent that at this crossing there are two freight sidings, one located north of the westbound track and the other south of the eastbound track. The view points above mentioned were not taken with reference to these sidings.

The petitioner introduced testimony indicating that at a point 45 feet south of the first southerly track (siding) the view which a person approaching the station in a northerly direction has is about 175 feet and at 65 feet from said track between 60 and 70 feet and at 70 feet from said tracks about 60 feet.

Taking into consideration the limited view from the south side of the crossing, as testified to on behalf of the petitioner, together with the number of people who use this crossing between the hours of 7 P. M. and 12:45 A. M., and the number of trains running over this crossing, we conclude that a condition of danger exists that warrants an order directing the additional protection of this crossing by a flagman or gates covering all train movements from 7 P. M. to 1 A. M.

An Order will so enter.

Dated September 28th, 1915.

ORDER.

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the

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date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, and it appearing that conditions at the crossing of the track of the Erie Railroad Company and Grant Avenue at the same level in the Town of Kearny, make it necessary for the protection of the traveling public that in addition to the protection now afforded protection should be provided at said grade crossing after the hour of 7 P. M., the Board

HEREBY ORDERS the Erie Railroad Company to protect the crossing at Grant Avenue, Kearny, where the tracks of the Newark branch of said company cross said avenue at the same level, covering all train movements between the hours of 7 P. M. and 1 A. M., by a flagman, to give warning of the approach of any and all locomotives, cars or trains of cars to be operated across Grant Avenue on the said Newark branch of the Erie Railroad, or by maintaining and lowering during the hours aforesaid, crossing gates upon the approach of any and all locomotives, cars or trains of cars as hereinbefore mentioned.

This Order shall take effect October 20th, 1915.

Dated September 28th, 1915.

No. 300.

THOMAS F. LOGAN AND CHARLES F. TUTTLE

VS.

CENTRAL RAILROAD COMPANY OF NEW JERSEY, ET ALS.

There was no evidence produced which would warrant the Board in concluding that the existing tariffs of the American Express Company on shipments of milk as now established by it to shippers between Pennington and Jersey City are unreasonable. Nor is there anything in the record which would warrant the Board in finding that the complainants

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are entitled to have their shipments of milk transported at the present freight rate in baggage cars attached to a passenger train.

No order is made in this proceeding, but it is recommended that the Central Railroad Company take such steps as may be necessary to insure the arrival of train No. 50 at Jersey City daily so that the milk may be placed at the milk platform not later than 11 p. m.

John Bentley, for the petitioners.

C. E. Miller, for the Central Railroad Company of New Jersey.

W. L. Kinter, for Philadelphia & Reading Railway Company.

E. E. Bush, for American Express Company.

The complainants operate a dairy farm in Pennington, New Jersey, and ship daily thirty-one or thirty-two cases of milk (twelve quarts in each case) to Jersey City. This milk is known to the trade as "Grade A raw" and the shippers contend that in order to sell the same to the consumer it must be delivered before six o'clock on the day following the shipment; that a very important quality of the milk is that it must not show a bacteria count greater than 60,000 per cubic centimeter; that milk forms an excellent medium for the increase of bacteria, making speed in delivery of prime consequence, and that under the present arrangements of the carriers milk can only be transported from Pennington to Jersey City on one train, which does not reach Jersey City at a sufficiently early hour to make it practicable to deliver milk to the consumer.

They further complain that a car supplied by the railroad company especially constructed so that milk therein was continually kept iced had been withdrawn from service, but it is now admitted that the aforesaid refrigerator car

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was placed in service on or about May 29th, 1915, following the informal complaint to this Board by the petitioners and service by said refrigerator car has been provided since that date, although no shipment of other than the milk of complainants is handled in said car between Pennington and Jersey City.

The complaint further sets forth that the milk is shipped on a train of the Philadelphia & Reading Railway Company starting at Philadelphia, stopping at Pennington and thence proceeding to Bound Brook. At the last mentioned station, after a wait of three hours, the car is connected with a train of the Central Railroad of New Jersey. It is asserted that a number of trains pass through Pennington earlier in the day, connecting at Bound Brook, which make the run to Jersey City in much less time and with greater regularity, and is insisted that the railroad companies should be compelled to permit their milk shipments on these last mentioned trains.

The freight rate from Pennington to Jersey City is one cent for each quart of milk, and the express rate is upwards of three cents a quart bottle.

The complainants ask that the railroad companies be ordered and directed to furnish the service of a refrigerator car for all shippers of milk along said line in such a manner and on such a schedule that the same will arrive at Jersey City not later than *three o'clock in the afternoon* of each day including Sunday, at the present rate, or that a rate by express of not more than three-quarters of a cent a quart on milk from Pennington to Jersey City with return of empty cases and bottles free be adopted by the American Express Company, or that the Philadelphia & Reading Railway and the Central Railroad of New Jersey be ordered and directed to permit at the present rate such milk to be carried as freight on their said lines at the present freight

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rate, and with return of empty cases and bottles in express or baggage cars that are attached to the passenger trains.

At the hearing, no evidence was given of the peculiar chemical composition of milk or the rapidity with which bacteria multiply in milk as a medium.

The Central Railroad of New Jersey denies any habitual delay in the operation of its train carrying the aforesaid milk to Jersey City, which is scheduled to arrive 11 o'clock P. M. It claims that it meets the requirements of the vast majority of defendant's milk shippers, and that during the month of June, 1915, reached Jersey City on the average at 11:01 P. M. and during the month of July, 1915, reached Jersey City on the average at 10:55 P. M. During said two months the train reached Jersey City after midnight on only one occasion. It insists that the deliveries of milk to it at Bound Brook from complainants and other shippers along the line of the Philadelphia & Reading Railway do not warrant it in giving to such shippers, at existing rates, the services demanded by the complainants.

The Philadelphia & Reading Railway Company admits there are certain trains operated by it in conjunction with the Central Railroad Company of New Jersey, which pass through Pennington earlier in the day than the train with the car that contains complainants' milk, and that such trains make the run between Pennington and Jersey City in less time, but insists it is not practicable for it to handle said milk on any of its trains other than the *milk train*, which now picks up said car at Pennington and transports it to Bound Brook.

The American Express Company defends its existing tariffs as fair and reasonable. It has no commodity tariff applying on milk in bottles in cases, and such shipments are subject to the Second Class rates established by the Inter-

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state Commerce Commission. This rate, which includes delivery service at Jersey City and the Borough of Brooklyn, is 57c. per 100 pounds.

From the evidence in the case, it appears the refrigerator car containing the complainants' milk is a part of the regular milk train which leaves Philadelphia about 12:45 with empties for points along the Philadelphia & Reading. This train arrives at Pennington about 3 p. m. and loads the complainants' shipment, proceeding with it to Bound Brook, arriving there at 5 p. m. From there it is carried to Jersey City by the Central Railroad of New Jersey as before stated, and is scheduled to arrive there at 11 o'clock p. m. It is returned during the night to Philadelphia.

There was no evidence produced which would warrant this Board in concluding that the existing tariffs of the American Express Company on shipments of milk as now established by it to shippers between Pennington and Jersey City are unjust and unreasonable.

Nor is there anything in the record which would warrant this Board in finding that the complainants are entitled to have their shipments of milk transported at the present freight rate in baggage cars attached to a passenger train. The complainants are paying a freight rate for a freight service and when they ask for an expedited and special express service with special facilities at freight rates, it is apparent their request ought not be granted.

This leaves only the delays in the present scheduled train which conveys complainants' milk for our consideration. The refrigerator car containing this shipment of milk is delivered by the Philadelphia & Reading to the Central Railroad at Bound Brook about 5 o'clock p. m., where it is later picked up by a Central train scheduled to arrive at Jersey City at 11 p. m. It sometimes arrives earlier.

The wide difference in the testimony of the several wit-

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nesses concerning the arrival of this train in Jersey City may be, in part, accounted for by the fact that the statement referred to in the testimony of the Superintendent of the Central Railroad "shows the time the train arrived at Jersey City." Other witnesses were speaking of the time the car stopped at the *milk platform*. When the train arrives at Jersey City it is then placed "by drill service" at the milk platform, which "takes between fifteen and twenty minutes." This drill service may account for much of the lost time and late arrivals complained of.

Allowing for necessary and unexpected delays in the loading and unloading of cars attached to this train between Bound Brook and Jersey City, it ought to be reasonably practicable to have the car in question placed at the milk platform in the last mentioned station, regularly, not later than 11:00 and if it could be depended upon at that hour, it ought to be satisfactory.

Considering all the facts before us, no order will be made, but it is recommended that the Central Railroad of New Jersey take such steps as may be necessary to insure the arrival of train No. 50 at Jersey City daily, so that the milk may be placed at the milk platform not later than 11:00 P. M.

Dated October 26th, 1915.

No. 301.

IN THE MATTER OF INSPECTOR'S REPORT ON CONDITION OF
TRACK OF TRENTON AND MERCER COUNTY TRACTION COR-
PORATION ON WEST STATE STREET, IN THE CITY OF
TRENTON.

A portion of the track of a street railway admittedly being in bad condition, and the utility claiming that defects could be corrected without

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track replacement, and that such correction would be immediately undertaken, no order was entered by the Board. Should the corporation fail to do the work as proposed without delay, or should it appear that this work does not fulfill the corporation's claims, the matter will be reopened and further consideration given to the question of requiring replacement of the track.

Henry M. Hartman, for the City.

E. M. Hunt, for the company.

An informal complaint as to the condition of the track of the Trenton and Mercer County Traction Corporation on West State Street in the City of Trenton was referred to the Board's Inspector for investigation. An inspection was made of the track and the Inspector on July 6th, 1915, recommended that the track between Willow and Prospect Streets should be renewed "with rails of suitable weight and section; that where necessary ties be renewed, and that paving in general be repaired." A copy of this report was forwarded to the Trenton and Mercer County Traction Corporation and its attention was directed to the inspector's recommendation. Since the inspection was made, that portion of the track between Prospect and Calhoun Streets has been relaid with rail of heavy section. New ties have been laid on stone ballast, with concrete between the ties. A new pavement is being laid on this street, which includes paving with granite blocks between the tracks.

Defects in the track between Prospect and Calhoun Streets, therefore, have been remedied by the corporation.

That part of the track between Calhoun and Willow Streets remains in no better condition than at the time of the inspector's report. The inspector reported that "joints were badly cupped, in many places to such an extent that the wheel flange runs on the tram of the rail. In other places the joint was uneven, causing a constant pound from every

Trenton and Mercer County Traction Corporation—Track.

wheel passing over the joint. The rail is corrugated in places fully an eighth of an inch and the track in general is badly out of line and surface.”

The corporation in its answer to the Inspector's report did not deny that the part of the track under consideration is defective. It denied the necessity of replacing the track to remedy the defects. A hearing was, therefore, called for the purpose of determining whether an order should issue requiring replacement of the track. Notice of the hearing was given to the Trenton and Mercer County Traction Corporation and to the City of Trenton, both of which were represented. The corporation claims that if it can grind out the corrugations and stop the pounding at the joints between Calhoun and Willow Streets, criticism will be discontinued. It states that it now has in Trenton “a grinding machine similar to others which are being used in Baltimore and elsewhere to smooth out corrugations, and which in conjunction with the type of welding machine which we also have in Trenton is being used to eliminate pounding at joints. We plan to commence work not later than October 11th with this equipment on West State Street between Willow Street and Calhoun Street, with the expectation of making that track satisfactory and without wasting whatever years of service there may be in existing rail.” The corporation states that this work will be completed in about one month after it is begun. It is the opinion of the Board that it is not unreasonable for the corporation to have an opportunity to remedy, without entire replacement of track, if it can do so, the defects which lead to complaint to the Board.

If, as the corporation contends, these are surface defects and the rails will, with the defects removed, give good service for some time to come, the Board would not be justified in ordering these rails replaced at this time.

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In view of the admission by the corporation that reasonable cause for complaint now exists as to the condition of its track on West State Street between Willow and Calhoun Streets, and of its assurance that it will immediately begin and promptly finish work which it claims will remove such cause, the Board will not enter any order in this matter. Should the corporation fail to do the work as proposed without delay, or should it appear that this work does not fulfill the corporation's claims, the matter will be re-opened and further consideration given to the question of requiring replacement of the track.

Dated October 11th, 1915.

No. 302.

MANUFACTURERS AND PROPERTY INTERESTS ASSOCIATION,
ET ALS

VS.

PENNSYLVANIA RAILROAD COMPANY AND HUDSON & MANHATTAN RAILROAD COMPANY.

Petition is for a station at West Side Avenue, Jersey City, on the Pennsylvania Railroad. The conclusions of the Board (Commissioner Treacy dissenting) are:

1. It does not appear to the Board that train service, identical with that provided at Summit Avenue, can be reasonably required under present conditions at a station located at West Side Avenue.

2. It does not appear that it would be reasonable to require the transportation of passengers from a station at West Side Avenue to the stations of the Hudson & Manhattan Railroad Company, at the rate of fare now charged for the transportation of passengers from Summit Avenue to such stations. With differences existing as to service and rates of fare between stations at Summit Avenue and West Side Avenue, such differences being to the disadvantage of West Side Avenue, and both stations being accessible to residents of the Marion station, it is our opinion that the patronage of the station at West Side Avenue would fall far short of the expectations of the petitioners.

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3. The additional expenditure necessary to make the changes in track and signal system, and for the construction of the new station to meet the desire of the petitioners, could not be reasonably required in view of what under the conditions would be the probable use of the station.

4. It does not appear to the satisfaction of the Board that the number of passengers who would use a station at West Side Avenue, if the same is established, would be sufficiently large to justify the Board at this time in issuing an order which would interfere with the high speed service now maintained between Harrison, Manhattan Transfer and Summit Avenue.

Petition dismissed.

Frederick C. Henn, for Manufacturers and Property Interests Association and other civic associations.

John Bentley and *Thomas J. Brogan*, for the city of Jersey City.

A. C. Wall, for the Pennsylvania Railroad Company.

Edwards & Smith, and *Gilbert Collins*, for the Hudson & Manhattan Railroad Company.

STATEMENT OF THE CASE.

The petition in this matter was filed originally by the Manufacturers and Property Interests Association and six other associations of Jersey City. The petition stated that the membership of these organizations consists of manufacturers, property owners and merchants of Jersey City organized for the purpose of discussing, recommending and obtaining civic improvements for the benefit and welfare of Jersey City.

The petition complained that the Pennsylvania Railroad Company and the Hudson and Manhattan Railroad Company, corporations operating railroads in and through the

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city of Jersey City, are not providing sufficient, proper and adequate service to the inhabitants of Jersey City, particularly to the inhabitants residing west of the Hudson County Boulevard.

It was alleged that the Pennsylvania Railroad Company is the owner or controls the operation of the electric trains running from Cortlandt Street, New York City, to Park Place in the city of Newark; that it also operates steam trains running from Exchange Place, Jersey City, to the City of Newark, cities and towns beyond; that a few of these steam trains stop at Marion, located at the western section of Jersey City and west of the Hudson County Boulevard.

The petitioners stated that they had been informed of an agreement in force between the Pennsylvania Railroad Company and the Hudson and Manhattan Railroad Company, by the terms of which the Hudson & Manhattan Railroad Company, operating an electric railway from Thirty-third Street, New York City, to the Summit Avenue station in Jersey City provides sufficient cars, conductors and brakemen for the trains operated by the Pennsylvania Railroad Company upon its roadbed from the Summit Avenue station to Park Place in the city of Newark. It was alleged that the train service at the Marion station is poor and inadequate. The Board was asked to order the Pennsylvania Railroad Company to abolish the station now maintained by it at Marion and to construct and furnish a proper station that can be used by electric trains running from Newark and New York at West Side Avenue. The Board was also asked to order the Hudson and Manhattan Railroad Company to extend the running of its trains from Thirty-third Street station, New York City, to the proposed station "herein asked to be erected at West Side Avenue, Jersey City."

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The answer of the Hudson and Manhattan Railroad Company to this petition alleges that it does not own, operate or control any line of railroad running through Jersey City west of the Summit Avenue station. It denies that the Pennsylvania Railroad Company owns or controls the operation of electric trains now running from Cortlandt Street, New York, to the city of Newark, and alleges that the Hudson and Manhattan Railroad Company operates an electric railroad from its Church Street station in New York to the Summit Avenue station in Jersey City; that the Pennsylvania Railroad Company operates an electric railroad from the Summit Avenue station in Jersey City to a terminal at or near Park Place in the City of Newark; that there is in force an agreement between the Pennsylvania Railroad Company and itself in respect to the maintenance and operation of an electric train service between the terminal of the Pennsylvania Railroad Company at or near Park Place in the City of Newark and the terminal of the Hudson and Manhattan Railroad Company at Church Street in the City of New York; that said agreement provides that the Pennsylvania Railroad Company and said Hudson and Manhattan Railroad Company will each furnish the electric power required for the movements of this service on its own lines and that said companies also agreed to furnish from time to time the necessary equipment for through service between Newark and New York City by said electric railroad lines, each contributing the same portion thereof as the length of their respective line used by it for such through service bears to the total length of line from Park Place station, Newark, to Church Street station, New York, and that in like proportions each shall employ the motormen, conductors and other joint employees required in connection with the operation of such through electric train service. The Hudson and Manhattan Railroad

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Company admits that it is operating an electric railroad from thirty-third Street, New York, to the Summit Avenue station in Jersey City, but sets up lack of jurisdiction on the part of the Board to make an order directing it to extend the running of its trains from its Thirty-third Street station in New York to the proposed station to be erected at West Side Avenue in Jersey City. It alleges that, in so far as the petition prays for an order directing it to extend its train service in Jersey City west of the Summit Avenue station in Jersey City, it does not own, operate or control any line of railroad running west of the said Summit Avenue station.

An answer in the form of a letter signed by Frank L. Sheppard, General Superintendent of the Pennsylvania Railroad Company, was filed by that company. It alleges that its present station at Marion, available for steam trains originating and terminating at Jersey City, affords such service as is fully commensurate with present and future needs; that said station is only 880 feet distant from West Side Avenue; that at Summit Avenue, distant 2,710 feet from West Side Avenue, there is a station of the Hudson and Manhattan Railroad Company from which ample and adequate service is conducted to and from New York stations at Cortlandt and Thirty-third Streets; also intermediate points as well as to Hoboken and Pavonia Avenue; that engineering features incident to the establishment of platforms necessary to serve the character of equipment that can be used through the Hudson and Manhattan terminal and at the same time so arranged and constructed as to also suitably serve standard railroad cars varying in width by something over a foot have not yet been devised, but even if such were the case said company is not prepared to incur the very large expenditure necessary to construct a station in the vicinity of West Side Avenue, which would be coupled

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with the elimination of the grade crossing, the substitution of a tunnel therein and of an under-grade crossing at the nearest available location west thereof.

At the first hearing held on February 26, 1915, the Mayor and Aldermen of Jersey City by Commissioners Brensinger and Byrne filed a petition containing the same allegations as those set forth in the petition of the Manufacturers and Property Interests Association. On April 9th, 1915, the Pennsylvania Railroad Company filed an additional answer admitting that it operates steam trains running from Exchange Place to Newark and places beyond and says that some of these trains about fifteen each way daily stop at Marion; that it is the lessee of the right of way from the west portal of the Hudson and Manhattan tunnel near Prior Street, Jersey City, to Park Place, Newark, the owner of which right of way is the United New Jersey Railroad & Canal Company. It alleges that the operation of the electric trains over the Hudson and Manhattan Railroad from Cortlandt Street to Summit Avenue and from Summit Avenue west to Park Place, Newark, is carried on under an agreement between it and said Hudson and Manhattan Railroad Company and other companies and an agreement supplemental thereto, both of which are in evidence. It denies that the service at Marion is poor and inadequate or that the inhabitants of the western section of Jersey City are without proper railroad transportation.

It further answers that between Newark and Summit Avenue, Jersey City, the electric railway is a rapid transit line and that if a station were installed at West Side Avenue necessitating a delay in train operation of two minutes on a journey between Newark and Summit Avenue, now consuming twelve minutes, fifteen per cent. of the efficiency of the express service between those points would be destroyed and the large body of the public employing this con-

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venience made to suffer for the convenience of a few in the immediate locality of West Side Avenue; that the Hudson and Manhattan line is an urban line from New York City to Summit Avenue station; that the electric line west of Summit Avenue is an interurban line; that the Marion station is 862 feet distant from West Side Avenue and serves a body of the public desiring to travel between that point and points on the main line of the Pennsylvania Railroad and that station is in no way connected with the electric service between Park Place and Summit Avenue; that it is not feasible to establish a station at West Side Avenue for the use of the type of train operated on the electric line and in the tunnels under the Hudson in conjunction with the standard steam trains employed on the main line of the Pennsylvania Railroad because of a difference in width between the tunnel cars and the steam railroad cars amounting to about a foot or more; that the community at West Side Avenue is adequately served by the Summit Avenue station 2,710 feet distant from the proposed West Side Avenue station; that the present ticket collecting system would be destroyed; that the establishment of a station at West Side Avenue would permanently reduce the train capacity of the rapid transit line and so depreciate the value of the entire investment; that the installation of such a station would cost a sum varying from one hundred to three hundred thousand dollars depending upon the method employed in the construction of the station and the conditions of surrounding property, the elimination of grade crossings and substitution of a tunnel or of an under-grade crossing at the nearest available location west; that the establishment of a station at West Side Avenue would violate the consideration which induced the Pennsylvania Railroad and the other companies to enter into the agreement with the Hudson and Manhattan Railroad Company if as an accompani-

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ment to the establishment of such a station the five cent fare provision were extended westerly to West Side Avenue.

The petition of the Manufacturers and Property Interests Association and others was amended by the filing of a new petition on April 12th, 1915, which alleges that the Pennsylvania Railroad owns or controls the operation of the electric trains running from Exchange Place, Erie station, Grove Street station, Summit Avenue station in Jersey City, and the station in Hoboken to Park Place, Newark, and prays that an order be made requiring the Pennsylvania Railroad Company to abolish the Marion station and to construct a station at West Side Avenue, which can be used by the electric trains running from Newark and from Hoboken, Erie station, Exchange Place, Grove Street and Summit Avenue stations in Jersey City.

The Mayor and Aldermen of Jersey City also filed an additional petition amending its former petition alleging that the Hudson and Manhattan Railroad Company operated trains on the electric railway from Hoboken and Exchange Place, Jersey City, to a point in the middle of the Summit Avenue station in Jersey City and that the Pennsylvania Railroad Company operates said trains west of said point and prays that an order be made directing both companies to erect and operate at West Side Avenue or at such other nearby point as may seem best, a station and provide cars for such passengers as may desire to use such station and to stop a sufficient number of trains operating on said railroad for the use of such passengers.

REPORT.

It is claimed, and the contention appears to be supported by the testimony, that the Summit Avenue station is not

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convenient of access by trolley to the greater part of those traveling to and from the Marion section. Testimony was given to the effect that employees of industries located in this section and living in other parts of Jersey City are inconvenienced in going to and from their work, that this causes manufacturers to refrain from establishing industries in the section, and that its development is retarded because of poor transportation facilities.

Mr. Lane, witness for the petitioners, testified that under his direction a census was taken as follows: Men in his employ were handed a number of blanks.

"These blanks are headed 'Population Census Form,' and are divided into several columns headed, name, sex, address, occupation, travel, how and why used, new station. These blanks were handed these men and these men were instructed to go from house to house in the district known as the Marion section, and which is set forth on this map, and to find out in each house how many people resided, what those people were, whether male or female, the number of workers, the number of school children, the number of infants, and how the people reach their work, their place of work, whether they walked to their place of work, whether they walked to the Summit Avenue tube station, whether they took a trolley car to their work or whether they took a trolley car to the tube station. They set down on these forms the names and the rest of the information that was given to them in these places." (Testimony, p. 297).

Mr. Lane produced a map which showed the section of Jersey City known as the Marion section, and indicated thereon the section in which the census was taken. It is the understanding of the Board that this is the section from which the travel to and from the proposed new station would flow. Mr. Lane's employees, who made the census, were produced at the hearing. Mr. Lane testified that he found in the section a total population of 11,200; that of this number of 11,200

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"1,791 or 16% of the total go to the Summit Avenue station daily. Of this number 1,304 or 11 7/10% of this total, 11,200, walk to the Summit Avenue station. The balance of 486 or 4 3/10% of the total of 11,200 ride in a trolley car to the Summit Avenue station. I found that 46 or 4/10 of one per cent of this total of 11,200 walked to the Marion station of the Pennsylvania Railroad. I found that 430 or 3 8/10% of the total population of 11,200 took a trolley car to some other point than the Summit Avenue station or to the Marion station." (Testimony, p. 315).

Mr. Lane gave testimony as to the time required to go from different points in the Marion section to the Summit Avenue station. It appeared that the longest time required to walk from any point selected by Mr. Lane to the station was eighteen minutes. Mr. Lane testified that it would take twelve minutes to walk from the same point to the proposed site of the new station. He stated also that it takes ten minutes to walk from Montgomery Street and West Side Avenue to West Side Avenue and the Pennsylvania Railroad; that it takes about seven minutes for the trolley car to run from West Side Avenue and Montgomery Street around to the Summit Avenue station, and that these cars are operated on a six minute headway, and that allowing an average wait of three minutes for a car it takes ten minutes to reach the station from this point. Mr. Lane expressed the opinion that if a station should be established at West Side Avenue, those who use the car to go from the Marion section to the Summit Avenue station would walk to West Side Avenue because the time would be about the same and there would also be a saving in car fare.

Several other points were taken, and the times required to walk from these points to Summit Avenue, and to the site of the proposed new station were noted. It appeared that with respect to these there would be a difference of about five minutes in favor of the site where the station is wanted.

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In addition to the 1,791 who go daily to the Summit Avenue station, it is claimed that out of the population of 11,200 there would be a number of others, not daily passengers, who would use a station at West Side Avenue in preference to the station at Summit Avenue. It does not appear from the testimony that all of those living in the Marion section would, with service and fares equal at stations at West Side and Summit Avenues, discontinue the use of the latter. The location of many residences, with respect to the Summit Avenue station and the site of the proposed station, lead to doubt as to whether this would be a fact. There would be no trolley service to the West Side Avenue station. While criticism is made of the trolley service it appears that 436 or 27 per cent of the daily passengers now use the trolley to go to the Summit Avenue station. Mr. Lane assumes that those who could reach a station at West Side Avenue walking all the way in the same time that they could reach the station by walking to the trolley and riding the rest of the way to Summit Avenue would prefer to walk to West Side Avenue. The Board is not convinced that this would be a fact, but rather is of the opinion that a number of those who now use the trolley would continue to do so and that this number would be materially increased in inclement weather.

The difference as testified to by Mr. Lane, in the times required to walk from different points in the Marion section to West Side Avenue and Summit Avenue, do not appear to be sufficiently great with respect to a large number of the residents of the Marion section, to give reasonable assurance of the use of a station at West Side Avenue, by a majority or even a considerable number of the residents, if any material disadvantage existed with respect to the station at West Side Avenue as to service, rates of fare, or both, as compared with Summit Avenue.

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The Board must, therefore, consider whether it is reasonable to expect that service at West Side Avenue would equal that provided at Summit Avenue and whether the same rates of fare would be reasonably applicable to both.

Summit Avenue is now a stop for all trains going to and from Newark. In addition to these a number of trains from New York go as far as Summit Avenue and return. Of the trains to and from Newark, many are trains connecting at Manhattan Transfer with through trains on the Pennsylvania Railroad to and from New York. Mr. De Long, Assistant General Passenger Agent of the Pennsylvania Railroad Company, testified that schedules of passenger trains showing departures from downtown in New York are based on high speed express service between Manhattan Transfer and Summit Avenue and that these schedules would have to be lengthened if a stop is required between these points. Testimony as to the time this stop would take is conflicting but, with due consideration given to safe conditions of operation and to the high speeds now maintained for the through service, it does not appear that it would be practicable to make up between the New York terminal and the Transfer the time which would be required to make another stop. Such stop would result in lengthening the schedules of the downtown trains or in delaying the through trains at the Transfer. This alone would not be sufficient to deter the Board from requiring the railroad company to stop connecting trains at West Side Avenue if it appeared that the railroad company should do this in compliance with its obligation to furnish adequate and proper service.

The petitioners do not insist that these steps are necessary for such service at the proposed station. They state in their brief:

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"There are only forty-eight trains out of one hundred and twelve that stop at the Manhattan Transfer and connect with the trains running on the main line, and the remaining trains runs past the Manhattan Transfer directly to Harrison and Newark * * *. There are sixty-six trains a day under the present schedule that do not stop at the Manhattan Transfer to make connection with the main line trains, so that if these trains were to stop at West Side Avenue station Mr. DeLong's objection would be entirely wiped out."

This suggests that as a compromise connecting trains should be permitted to run as now between Summit Avenue and the Transfer without stop. It is apparent that this would make a marked difference in the service afforded at the two stations, and, with both accessible to the people of Marion, it is reasonable to assume that notwithstanding the disadvantage of its location many would, because of this difference, continue to use the station at Summit Avenue. If the trains which now run from New York to Summit Avenue should extend their runs to West Side Avenue, there would be an interference with the local service to and from Summit Avenue, which would be to the disadvantage of the large number of passengers using the Summit Avenue station as well as undesirable from an operating standpoint. If the runs should not be extended to West Side Avenue, there would be a further addition to the difference in service between the stations.

According to Mr. Lane's testimony as quoted, supra, 1,791 of the 11,200 residents of the section in which his census was taken now go daily to Summit Avenue station. It does not appear how many of these go to and from employment in other places, but it is reasonable to assume that very many, if not most of them, travel during commission hours, when the maximum service is most in demand. It seems to the Board that the difference which could not be reasonably avoided in service between the station at Summit Avenue and a station at West Side Avenue, would de-

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tract materially from the advantage of more convenient location of the latter, and make its use much less than is anticipated by those who urge its construction.

RATE OF FARE.

It appears that the new station is wanted along the line of the Pennsylvania Railroad. It further appears that there is but little demand for a station at West Side Avenue for travel on this railroad to the west. Summit Avenue is 2,710 feet east of West Side Avenue. At Summit Avenue the line of the Pennsylvania Railroad ends and the Hudson and Manhattan Railroad begins. The petitioners want the new station chiefly in order that they may have a station more convenient of access for those who travel on the Hudson and Manhattan Railroad.

It appears that by agreement between the Pennsylvania Railroad Company and the Hudson and Manhattan Railroad Company and allied companies, referred to in the agreement as the "Tunnel Companies," the station at Summit Avenue was erected by the Pennsylvania Railroad Company with the understanding that it should be used jointly by the Pennsylvania Railroad and the Tunnel Companies; that it was further agreed that the Pennsylvania and the Tunnel Companies should each furnish its own electric power required for the movement of service on its lines and each agreed to furnish, from time to time, necessary equipment for through service between Newark and New York; that each company should receive the full fares collected from passengers carried by them respectively to and from the Summit Avenue station; that receipts from the transportation for joint train service of through passengers between Newark or Harrison or any station west of

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the dividing line in Summit Avenue station and the tube stations in Jersey City and Church Street, New York, should be divided between the companies, the Tunnel Companies receiving four-tenths of the rate charged between any point on or reached by the Pennsylvania Company's line and stations of the Tunnel Companies, provided that the latter should not receive more than five cents for any passenger so carried. The Tunnel Companies receive no part of the fare charged eastbound Pennsylvania passengers whose journeys do not extend beyond Summit Avenue. For each of those who travel beyond Summit Avenue from Park Place, Newark, and who pay to the Pennsylvania Railroad Company seventeen cents for their transportation, the Tunnel Companies receive five cents for compensation for the performance of their part of the contract with the Pennsylvania Railroad Company for the transportation of its passengers to their stations.

The agreement between the companies provides that the Pennsylvania Company shall fix the rates for carrying passengers between the points on its line and the tube stations in Jersey City and at Church Street Station, New York, but that the Pennsylvania Company shall not, without the consent of the Tunnel Companies, make a rate of less than ten cents for any passenger carried between any point on its line and the stations of the Tunnel Companies.

This agreement would not prevent the Board from fixing a rate less than ten cents to be charged for a trip from a station on the line of the Pennsylvania Railroad to a tunnel station if the charge of ten cents should appear to be unjust and unreasonable. The rate charged by the Hudson and Manhattan Railroad Company from Summit Avenue to other stations on its line in New Jersey is five cents.

The petitioners in this matter apparently desire and expect that if a station is located at West Side Avenue the

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same rates of fare will prevail between West Side Avenue and the Tunnel stations as are charged between Summit Avenue and such stations. It is apparent that this rate could not apply to passengers from West Side Avenue unless the Pennsylvania Railroad Company should carry such passengers between West Side Avenue and Summit Avenue free of charge, or the Hudson and Manhattan should charge less than five cents per passenger for those traveling from West Side Avenue. The Board could not require the Pennsylvania Railroad Company to furnish free service. There is not sufficient evidence before the Board to admit of a determination of what a reasonable joint rate would be. Any joint rate fixed by the Board must necessarily admit of a reasonable return to both the Pennsylvania and the Hudson and Manhattan Railroads. It appears, *prima facie*, that this rate would be in excess of the fare charged between Summit Avenue and the tunnel station. This would be materially to the disadvantage of the West Side Avenue station so that this considered in connection with a difference in train service in favor of the Summit Avenue station, previously referred to, would tend to still further divert travel from the West Side Avenue station to Summit Avenue.

COST OF ADDITIONAL FACILITIES.

A factor which would have to be considered in determining the reasonableness of the charges which should be made by the Pennsylvania Railroad Company for service provided by it at West Side Avenue, as well as a factor which must be considered in determining whether a station should be ordered, is the cost of additional facilities. The testimony with respect to this is conflicting.

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It is evident that this cost cannot be limited to expenditures merely for the construction of platforms and shelter-sheds. To admit of convenient use of a station at West Side Avenue, and to provide in the event of such use for the safe operation of a large number of trains past this point will require changes in tracks and signal system which necessarily must be expensive. It would be necessary for the proper protection of passengers to prevent the crossing of the tracks at grade. If a station is maintained at grade a subway under the tracks or an overhead bridge would have to be constructed. A station such as is maintained at Summit Avenue with tracks below the street level and with ingress and egress afforded by means of elevators would unquestionably be most desirable for public use.

James Forgie, an engineer testifying for the railroad company, estimated the cost of depressing the tracks, making street changes, the building of the station and other work required for a sub-grade station at more than a million dollars. Plans on which such an estimate was based were not submitted nor was the estimate in sufficient detail to admit of a satisfactory check thereof. The Board is inclined to believe the cost is exaggerated and that a sub-grade crossing could be built for less than Mr. Forgie's estimate. Against this, and representing an extreme in the other direction, is an estimate of fifteen thousand dollars submitted by Mr. Dunham, a director of the Raritan River Railroad, testifying for the petitioners. It is apparent that this estimate was not based on a comprehensive plan in which proper consideration was given to the different elements of cost that must enter into the work. Mr. Forgie submitted an estimate of \$390,000, as the cost of a station at the street level. While this sum undoubtedly could be spent to take care of the different items of cost

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referred to by Mr. Forgie the Board is of the opinion that an adequate station not at grade could be built and the necessary changes made without an expenditure as great as indicated by him. In its answer to the complaint the railroad company states:

"The installation of a station at West Side Avenue would cost a sum varying from one hundred to three hundred thousand dollars, depending on the method employed in the construction of the station and the conditions of surrounding property, the elimination of grade crossings and substitution of a tunnel or an undergrade crossing at the nearest available location west."

It does not appear in the testimony on what the company's approximation of cost was based. If it be assumed that the lowest figure named by the company would not be exceeded this would involve a capital expenditure of \$100,000 on which interest charges would have to be met and an allowance made for depreciation.

To this it would be necessary to add the additional cost of service. This is estimated by Mr. Forgie at \$27,000 per year, which sum includes an allowance of \$9,125 for power for accelerating and retarding speed of trains stopping at the station.

Mr. Lane estimated that the cost of maintenance of the station would not exceed fifty dollars per day. With respect to this Mr. Lane testified:

"That is made up on the station labor, an item of seven dollars a day, consisting of three ticket agents and one porter. It is made up on the lighting of the station, it is made up on the possible additional cost of stopping the cars at that station, and the interest on the investment." (Testimony, p. 570.)

There is a wide difference between Messrs. Lane and Forgie in their testimony as to the number and cost of employment of employees who would be required at the pro-

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posed station. Mr. Forgie assumes there would be required an agent, two clerks, two ticket choppers, six platform men, two janitors and cleaners, three signal operators and three signal maintainers, the cost of whose employment would be \$14,942 annually.

The Board is not convinced that as many employees as Mr. Forgie suggests would be required. On the other hand, Mr. Lane's estimate of the cost of service apparently is too low. No allowance, for example, is made by him for platform men, and it does not appear that his estimate includes the cost of additional signal operators.

If, however, Mr. Lane's estimate of the total cost of maintenance, including interest charges, should be accepted and the Board should assume that this would not amount to more than \$50 per day, it would total an expenditure of \$18,200 per year.

The Board is not satisfied that there would be a return to the company from the establishment of a station at West Side Avenue, which would reasonably justify a requirement that this expenditure, which it is not unlikely would be exceeded, should be made. Any diversion of the travel from the Summit Avenue station would not admit of any decrease in the number of employees at the Summit Avenue station, and no saving at Summit Avenue could be reasonably expected because of the change. On the other hand, those who would use a station at West Side Avenue would be passengers who, if such station were not in existence, would use the station at Summit Avenue. The increased expenditure being wholly an expenditure by the Pennsylvania Railroad Company, if it is to be defrayed by an additional return, such return would have to come from the charge made by it for the transportation of passengers between West Side Avenue and Summit Avenue, or made up from revenue derived from other users of the company's service.

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CONCLUSIONS.

The Board, after giving careful consideration to the representations made to it and to the testimony submitted as to the inconvenient location of the station at Summit Avenue for residents of the Marion section; the complaint of inadequate service at the station at Marion and the petitions for an order requiring the abandonment of the Marion station; building of a new station at West Side Avenue and stopping of trains thereat, is of the opinion, upon the record before it, that the petitions must be denied, for the following reasons:

1. It does not appear to the Board that train service, identical with that provided at Summit Avenue, can be reasonably required under present conditions at a station located at West Side Avenue.

2. It does not appear that it would be reasonable to require the transportation of passengers from a station at West Side Avenue to the stations of the Hudson and Manhattan Railroad Company, at the rate of fare now charged for the transportation of passengers from Summit Avenue to such stations. With differences existing as to service and rates of fare between stations at Summit Avenue and West Side Avenue, such differences being to the disadvantage of West Side Avenue, and both stations being accessible to residents of the Marion section, it is our opinion that the patronage of the station at West Side Avenue would fall far short of the expectations of the petitioners.

3. The additional expenditure necessary to make the changes in track and signal system, and for the construction of the new station which would be needed to meet the desires of the petitioners, could not be reasonably required in view of what under the conditions would be the probable use of the station.

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4. It does not appear to the satisfaction of the Board that the number of passengers who would use a station at West Side Avenue, if the same is established, would be sufficiently large to justify the Board at this time in issuing an order which would interfere with the high speed service now maintained between Harrison, Manhattan Transfer and Summit Avenue.

For the reasons cited in this report the petitions must be DISMISSED and an order will so enter.

The Pennsylvania Railroad Company claims that the electric line from Newark to Jersey City was designed with the idea that this line would be a rapid transit line from Newark to Jersey City, and that it now is such a line between Manhattan Transfer and Summit Avenue. Great stress is laid by the company upon its claim that express service between these points is necessary in order that the Pennsylvania Railroad Company may maintain its fast express service from points on its line to downtown New York.

James Forgie, expert for the railroad company, testified:

"This line, this express route between Summit Avenue and Park Place and local express in this metropolitan district must either be one thing or the other. To introduce a local station here and there is merely to pervert its use." * * *

"In New York they don't call for two tracks to perform the service up and down town or into the reaches of Brooklyn or Long Island or up by the Bronx. They divide the service, they say, we will give one service to express and we will give the other service to local." (Testimony, pages 377 and 378.)

It is true that consideration should be given to the desirability of maintaining, so far as is practicable, a fast express service from Manhattan Transfer to Jersey City and the lower part of New York City. In the report of the Board made on the complaint of the Board of Street and

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Water Commissioners of Newark against the Pennsylvania Railroad Company, which report was filed September 8th, 1913, this Board stated:

"The service from Park Place to Jersey City and via the Hudson & Manhattan to New York uptown and downtown is an undoubted advantage to the cities at either terminus. The number of trains, the time of the trip and the character of the service are sufficiently in evidence to substantiate this."

Notwithstanding all that may be said in favor of the express service, the Board is unwilling to approve a proposition that a railroad company may plan a route especially for such service, make no provision for local service along the route, and expect that it will remain for all time a through route. It may be that for a period the advantages of express service would reasonably predominate. But as the territory along the line develops and grows, the demand for additional stops will become more and more insistent, and where it is shown that such demands are based upon grounds which would reasonably justify the requirement of local stops, such stops must and should be made. It is not unreasonable to anticipate that the time may come, perhaps in the not distant future, when, if the road between Manhattan Transfer and Summit Avenue remains as it is now, it will be necessary, in order to meet the reasonable demands for proper and adequate local service, to make the express service subordinate to the local service. This would result in the line becoming a purely local line. It would seem, therefore, in order that the express service may be maintained and the demands for local service met with proper facilities the railroad company may well give consideration to the problem of devising, to meet the growth and development along this line, some plan whereby both express and local service may be safely and adequately provided.

Dated October 26th, 1915.

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DISSENTING REPORT.

BY COMMISSIONER TREACY.

I do not agree with the majority report. I think that the following deductions may fairly be drawn from the testimony: That the so-called Marion section of Jersey City has a population of about 11,000; that 1,791 of these people who now use the Summit Avenue station would (the same fare prevailing) in all probability use the proposed West Side Avenue station because of its more convenient location; that in addition, probably between 500 and 600 employees of factories would use it; that the section in question is developing rapidly and contains industrial plants employing several thousand persons; that the steam railroad service at Marion is not proper or adequate; that the street railway service on the Turnpike line on West Newark Avenue is poor, largely on account of unavoidable delays caused by the other vehicular traffic on that street; that the walk to the Summit Avenue station for most of the persons residing in the section mentioned is up hill, from ten to fifteen minutes duration and over a circuitous route; that the new West Side station would be 2,700 feet from the one at Summit Avenue; that the manufacturing plants in this section have difficulty in getting customers because of the distance from Summit Avenue.

The Hudson and Manhattan Railroad Company's defense is a plea to the jurisdiction of the Board. Assuming that the petitions as originally filed, both of the civic bodies and the city were open to this objection in asking that the Board order the operation of trains and carrying of passengers by the respondents to New York, the amended petitions deal with matters affecting intrastate service purely, and present a case within the jurisdiction of this Commission.

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The Hudson and Manhattan Railroad Company after introducing in evidence a map of its line and the agreement between the companies in respect to the operation of the system took no further part in the case and thereafter the defense was conducted by the Pennsylvania Railroad Company. The objections of that company to the prayer of the petition will be considered.

(1) That it is merely the lessee of the right of way and that its lessor, the United New Jersey Railroad and Canal Company, is not a party. It is not necessary that any other than the operating utility be made a party. Public Utility Act, Laws 1911, Ch. 195, Sec. 15.

(2) That the steam service is adequate. The testimony of Saul and others is uncontradicted that the number of trains stopping at the Marion Station is less than it was a few years ago. The time table gives no westbound train after 7:45 A. M. until 10:28 and none between 2:27 P. M. and 4:32 P. M. The first eastbound train after 8:32 A. M. is 10:06 and there is none thereafter for three hours. In the twenty-four hours there are only 17 trains each way. This is not proper or adequate service to a district with a population of more than 11,000. The steam trains do not go to any of the stations on the electric line east of Summit Avenue except Exchange Place, nor do they stop at Manhattan Transfer, points to which the petitioners desire transportation.

(3) A stop at the new station, it is contended, would necessitate a delay in train operation of two minutes between Newark and Summit Avenues; the line between these points is a rapid transit or express service and the large number of Newark passengers should not be delayed. This is the objection—the interference with the character of the line as a rapid transit one—most strenuously urged. A railroad's first duty is to properly serve the territory through

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which it runs. The characterization by the company of its line as a rapid transit line does not change or affect that duty. If it has the right to say that the Newark passengers shall not be delayed by a stop at Marion it may also for the same reason request that the station be abolished at Harrison (the population of which according to the 1910 census is but slightly in excess of that of the Marion section.) The traveling public of New York patronizing the Pennsylvania Railroad Company's trains for Philadelphia may similarly feel inconvenienced by a stop at Newark, but no matter how anxious the company might be to accommodate the New York patrons it would not be permitted to exclude the Newark public from the use of its transportation facilities. Express service on a passenger railway is, of course, to be encouraged where it can be maintained coincidently with local service, but if its maintenance excludes the local service the community may properly demand that the express service be regulated to meet the reasonable requirements of local service. If the number of people now traveling daily from the Marion district to the Summit Avenue Station who, presumably, would use the new station, be added to the number of factory employees in the district who have signified their intention of using it, an aggregate of about 2,400 persons daily might reasonably be expected to avail themselves of the new station facilities. This number is not so inconsiderable that its convenience can be altogether ignored because its accommodation may occasion a delay of two minutes or less to a larger number. The practical difficulty which the respondent sets up is the maintenance of an express service on what is or should be local service tracks, a difficulty that must exist always where separate tracks are not provided for the two services. The people of Marion should not be made to suffer if the railroad finds itself confronted by an embar-

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rassment which it alone has caused and of which it may relieve itself by the construction of necessary additional tracks.

But it is doubtful if any part of this line can be considered as devoted to express service solely. The respondent, indeed, states that the only portion of it so used is that between the Manhattan Transfer and Summit Avenue. All the rest of the line it declares to be "local traffic" and as such it is designated on the photographic map introduced in evidence. From Newark to Manhattan Transfer and from Summit Avenue to Cortlandt Street, New York, it is a local service line. A stop is made at every station between Newark and New York. Why the line is an express line between Manhattan Transfer and Summit Avenue, which are immediate stations and is not an express line between any other immediate stations is not clear. If it is a local traffic line between all other stations, it would seem to be a similar line between Manhattan Transfer and Summit Avenue.

While dwelling on this phase of the case it is significant that Mr. Frank L. Sheppard, the General Superintendent of the Pennsylvania Railroad, in the answer filed by him for the railroad to the petition herein, omitted any reference to the claim later made by this company that the establishment of a new station would do violence to the original design of a rapid transit line as conceived by the officials of the railroad of which he himself is an important official.

(4) The respondent contends that a new station would add complications to the ticket collecting system now in effect. This is a matter of detail. I have no doubt that the splendidly efficient administrative force of the Pennsylvania Railroad Company could find a way to overcome the difficulty, but at all events it is not a matter which should be permitted to stand in the way of the right of the public to proper and adequate service.

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(5) The construction of a bye-pass or gauntlet which would be necessary at the new station site would create an unnecessary danger in the separate operation of the steam trains and electric trains at that point. This contention of the respondent is based upon the fact that the cars of the main line used in the steam service are so much wider than the tube cars that the same track cannot be used for both classes of equipment at the station platform. To obviate this condition the gauntlet arrangement was installed at Manhattan Transfer and a bye-pass at Summit Avenue. Approaching these stations both classes of equipment use the same tracks to within a very short distance of the station, the steam cars being switched to a separate track passing the station. The additional element of danger complained of is in this switching operation, the engineer of the steam locomotive in approaching the station being obliged to follow a different signal system from the electric car motorman. But in the light of the testimony that the system has been in operation for three years at Manhattan Transfer and Summit Avenue without accident, I believe that the feasibility and safety of operation of the system has been proved sufficiently to justify the conclusion that the hazard does not differ greatly from that of any other switching operation. In this as in all other switching movements the engineer, presumably, proceeds at a reasonably slow rate of speed.

(6) The West Side Avenue section, it is contended, is adequately served by the existing station at Summit Avenue. Reference to the testimony of Mr. Lane and the map produced in evidence shows that the section in question beginning on the western slope of the hill, which forms the higher portion of Jersey City, runs westerly about half a mile to the meadows, which skirt the Hackensack River, while the distance from its northern to its southern boun-

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dary is about two-thirds of a mile. The Lorillard, Mengle Box Company, Brewster Cocoa, Manhattan Brier Pipe Company and other plants employing nearly 5,000 persons are located there. The steam train service, which this section at one time received, has been reduced by the respondent since the Summit Avenue Station was erected. The very location of the station at Marion and its maintenance for many years with better service than at present, according to the testimony, would seem to be an acknowledgment by the railroad company that the company itself considered that section entitled to proper station and transportation facilities. People in this district are compelled now to go to the Summit Avenue Station up a hill of considerable length and grade. Most of them must travel half a mile or more to obtain train service that was formerly readily accessible. For the railroad company stopped more trains at Marion and, although those trains were not through trains, they enable the population there to connect more easily with the express and through train service to all points on the Pennsylvania Railroad system at its terminus at Exchange Place in Jersey City. When it is remembered that the terminus has been transferred to New York and practically the entire express train service of that railroad is only available at New York or Manhattan Transfer, necessitating a longer journey by the Marion people, who desire such service, it cannot be denied that those people have been deprived of some of the opportunity for service by the respondent Pennsylvania Railroad Company which they possessed and which is not compensated for by a station undeniably less accessible on the tube line, connecting, as it does, with the express train service only in New York uptown or at Manhattan Transfer in Kearny.

(7) The railroad company objects to the construction of a station at West Side Avenue because of its cost. The

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expert called on behalf of that company gave his opinion as to the cost of a station according to two different plans. One plan involved among other things the abolition of grade crossings, the elevation of the tracks, the building of a depressed station and the addition of two tracks, making a four-track system instead of a two-track line for passenger service, at a cost of \$1,112,000. In the brief of the respondent neither counsel for the company nor the expert himself who wrote part of it contends seriously for this plan. I do not feel called upon to consider it because a station involving such cost is not necessary. Without going into the details of this estimate we might call attention to the fact that a quadruple tracking of the system is included in it. Why the undoubtedly great cost of two additional tracks, which would benefit the whole line should be set up to defeat the demand of the Marion section for a station is not clear. If such additional tracks are not needed now the addition of a station there cannot make them necessary. If the traffic on this line now requires additional tracks the cost of their construction should be charged against the whole line.

The second estimate presented by the expert was for a station built at grade. Apparently his ideas of the cost of such a station and those of the company are not harmonious. The cost of this station according to the expert is \$390,000. The railroad company's answer filed in the proceeding says that it will cost a sum varying between \$100,000 and \$300,000 "depending on the method in the construction of the station and the conditions of surrounding property, the elimination of grade crossings and substitution of a tunnel or of an undergrade crossing at the nearest available location west." I assume that the estimate of cost set forth in the company's answer is what its own engineers gave it. The expert who testified as to a cost of \$390,000

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was not in the regular employ of the company. The highest possible cost of a station at grade as stated in the company's answer is \$300,000 and in that sum the best method of construction, the conditions of surrounding property, elimination of grade crossings and substitution of a tunnel or undergrade crossing are included. I infer that the station, therefore, may be installed at grade for the lower sum mentioned in the answer of the company namely, \$100,000. This sum seems to me a sufficient cost for a station to satisfy the needs of this community. The expert's estimate calls for expenditures in construction which I cannot conceive as necessary. For instance, without going into more than a few items, I am not at all convinced that it is necessary to excavate 40,000 yards of soil for a station built at grade on land that is level, nor even if that quantity of excavation should be necessary that it would cost \$160,000. Nor do I see why it is necessary to build a new overhead bridge at Tonnele Avenue 880 feet distant at a cost of \$28,400 or to repair the old Marion station at a cost of \$4,000. He admitted that his estimate was based upon the view that the station should be constructed in accordance with what he termed "Pennsylvania Standards," but also admitted that no other station on this electric line was built according to such standards. He said a station building which would accommodate the traffic could be built for \$10,000 less than his estimate of \$23,000. The item in his estimate, cost of maintaining traffic \$40,000, has not been explained in detail, nor does it appear, in view of City Commissioner Brensinger's statement that the city will grant the use of an adjoining street for \$2,400, what property must be acquired to cost \$20,000. Taking his figures of cost of track construction, \$41,800, building and shelters, \$13,000, conduits, \$5,000, interlocking signals, \$12,000, it would seem that the installation of the station would cost

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about \$72,000, to which sum ten per cent for engineer's fees, interest during construction, etc., and \$2,400 for the street rights should be added.

I think that the estimate of Mr. Dunham, the civil engineer who testified for the petitioners, that the entire cost of installing the station would be \$15,000 is too low. I note that he omits from his estimate the construction of a gauntlet or bye-pass, one or the other of which I believe necessary. I am inclined as above indicated to believe that the cost of installation of the station would be within the lower of the sums stated in the company's answer, viz.: \$100,000.

As to the cost of maintaining the station we have three estimates: Mr. Forgie's, \$71.25 per day; Mr. Lane's, \$50, and Mr. Dunham's, \$20. I am inclined to accept the figure of Mr. Lane, who was in charge of the traffic arrangements of the Brooklyn Bridge railway system for some years.

The detailed items of Mr. Lane's estimate of the cost of operating and maintaining the station aggregate \$43.73 per day, but he said he made it a round figure of \$50 per day, nearly \$7 per day more. He also estimated the cost of power for stopping and starting trains at the station at \$7 a day more than Mr. Forgie's estimate, but he computed interest upon a cost basis of only \$15,000, the figure given him by Mr. Dunham as the probable cost. It is probably fair that a halfway figure between Mr. Forgie's estimate for cost of power and Mr. Lane's be taken. This would reduce Mr. Lane's detailed estimate to about \$40 per day. Adding to this interest at $4\frac{1}{2}$ per cent, the rate suggested by Mr. Forgie, on \$85,000, the balance of the sum allowed for the establishment of the station, or say about \$10 per day, brings the total for maintenance and interest on cost of investment up to about \$50 per day, or \$18,250 annually.

Under the terms of the agreement between the Pennsylvania Railroad Company and the Hudson and Manhattan

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Railroad Company and others as to joint operation of the system the latter is to receive from the former 4-10 per cent of the amount charged between any point west of Summit Avenue and any station of the Hudson and Manhattan Company in Jersey City and New York; but in no event should it ever receive more than five cents nor less than four cents per passenger. The fare from Summit Avenue to downtown Jersey City and New York is five cents. The fare from the new station, owing to the additional half mile, should, in my judgment, be six cents. If, after a year's operation, it should appear that such fare is unreasonable, it could be readjusted by the Board. Taking the above ratio as the rate of division the Pennsylvania Company would receive about four cents for each eastbound passenger and the Hudson and Manhattan two cents. A similar division as to westbound passengers to West Side Avenue delivered by the Hudson and Manhattan could be fixed.

As stated, *supra*, the number of persons who would probably use the new station daily at a five cent fare is 2,400. Assuming that twenty-five per cent of these would decline to use the station because of the increase in fare, there would remain 1,800 who would do so both ways. Upon the basis of division above the Pennsylvania Company would receive \$72 per day from the station, which would, in my judgment, cover all costs of operation and maintenance and leave a fair margin of profit. Of course, the Pennsylvania Company would receive all fares from West Side Avenue to points west of that place.

It has been suggested that the agreement between the companies may be interfered with if a new station involving a new rate of fare be established. This may or may not be true. But utilities cannot make agreements for the regulation of rates or service which this board exercising the power of the State may not supervise.

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The reasons assigned in the majority report of this Board for its refusal to direct the building of a station are: First, that the petitioners, having consented that no electric trains stopping at Manhattan Transfer be required to make a stop at Summit Avenue, (such consent having been given by petitioners in order to meet the objection that the main line trains at the Manhattan Transfer might be delayed by a West Side Avenue stop of the connecting electric train,) would find that the remaining trains would not furnish satisfactory service and, therefore, many of the people of the Marion section would still go to the Summit Avenue station where there is better train service. It doesn't seem to me, however, that because the Marion people were reasonable enough not to demand the stopping of Manhattan Transfer connecting trains that their concession can fairly be used to defeat their demand for a station. Reduced to logical form the reasoning of the majority report is this: The people of Marion are willing that trains connecting at Manhattan Transfer should not be stopped at West Side Avenue; but the Board says owing to such generous consent it finds that the remaining trains would not furnish the people of Marion satisfactory service; therefore, in order that the people of Marion shall not have to put up with unsatisfactory or insufficient train service, the Board will allow them no train service whatever.

If the petitioners are to be penalized for their offer of compromise on the number of trains to be stopped at the proposed new station by the loss of such station, they should be permitted to withdraw their offer and insist that all trains necessary to furnish them sufficient service shall be required to stop at West Side Avenue.

The majority report says that because there are some trains from and to New York which use Summit Avenue as a terminus, many of the people of Marion would still

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continue to use the Summit Avenue Station even if the West Side Avenue station were installed. This objection would, however, be overcome by a compliance on the part of the Board with the prayer of the petition that all trains to Summit Avenue be required to continue to West Side Avenue. There does not appear to be any reason why this should not be done. The railroad yard is about half way between Summit Avenue and West Side Avenue and trains terminating their trips at Summit Avenue at present must go to the westerly end of the yard to switch to another track. Necessarily going half the way, therefore, to West Side Avenue, I think that an additional 1,200 or 1,400 feet to that Avenue would not seriously interfere with the operations of the road.

The second and third reasons assigned for the refusal of the petitioners' request is that the Hudson and Manhattan Company is receiving five cents per passenger from Summit Avenue and if a greater fare were not allowed from West Side Avenue the Pennsylvania would carry passengers between Summit and West Side Avenues for nothing, or the Hudson and Manhattan would receive less than five cents. In the first place, if it is assumed that nothing less than a five cent fare for the Hudson and Manhattan Company is reasonable, such assumption is overthrown by that Company's agreement with the Pennsylvania Company, which names four cents as an acceptable and *prima facie* reasonable fare. In the second place, the fare of six cents, which I have above shown, would allow to the Pennsylvania Company a reasonable return. To the suggestion that this is no evidence of what a reasonable joint fare should be, the answer is that the joint agreement is itself the best evidence of what that fare should be.

These are the only reasons given in the majority report for the conclusions reached therein. Those conclusions are:

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“1. It does not appear that train service, identical with that provided at Summit Avenue, can reasonably be required at a station at West Side Avenue.” On the other hand, in my opinion it does not appear that it would be unreasonable to require such service at West Side Avenue. In fact, there is no evidence of any kind to support the conclusion, and, therefore, no justification for it.

2. The second conclusion of the majority of the Board is that it would be unreasonable to establish a five cent fare from West Side Avenue to Hudson and Manhattan stations, and if a greater fare were charged, such greater fare together with the greater number of trains at Summit Avenue would cause people of the Marion section to continue to patronize the Summit Avenue station. This is based upon the first reason considered in the majority report and which I have discussed above. I might add, however, that I doubt that there are many persons in this section among the 1,304 who now have to walk to Summit Avenue who will climb a long steep hill and travel from a quarter to a half mile farther to catch a train in order to save the one cent additional fare proposed. As to those who now go by trolley, numbering 430, I think nearly all will use West Side Avenue to avoid the payment of two fares.

3. The third conclusion is that the additional expenditure necessary to install a new station would not be justified. As I have shown above, the income from the station would be \$72 per day, which might be increased by transients who would not use the station every day, but would use it once or twice a week. This would furnish a net income to the company of over \$20 per day.

4. The fourth conclusion is that the number of passengers would not be sufficiently large to justify the Board at this time in issuing an order, “which would interfere with the high speed service now maintained between Manhattan

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Transfer and Summit Avenue.” This question has been covered in the first part of my report. Notwithstanding this conclusion of the majority of the Board, it is added in an addendum following the conclusions that it is not unreasonable to expect “in the not distant future” that the express service must be subordinated to the local service by the location of a station at Marion. If this means that the majority view is likely to change in the near future, there does not seem to me any justification for compelling these petitioners to again be subjected to the expense, loss of time and labor to obtain a decision in their favor, which may just as well be rendered now.

Dated October 26th, 1915.

No. 303.

IN RE NEW SCHEDULE OF RATES FOR METERED SERVICE—
BOUND BROOK WATER COMPANY.

The cost to reproduce new the property of the Bound Brook Water Company less accrued depreciation is found to be \$154,261. To this, \$22,000 is added to cover cost of organization and obtaining franchises, working capital and development costs. Deducting \$5,817, value of property not needed in present operations, leaves as the basis on which to predicate rates \$170,444.

The capitalization of the company is stock, \$100,000; bonds, \$50,000. The population of the territories served numbers 5,500. Of this number 4,050 reside in Bound Brook and 1,200 in South Bound Brook. The revenue per \$1.00 of value of mains from Bound Brook is 64 cents, from South Bound Brook, 14 cents. The net revenue from Bound Brook amounts to less than 6% on the fair value of the property devoted to the public use.

The Board adopts a new rate schedule to be observed by the company.

Clarence E. Case, for the company.

John F. Reger, for the Borough of Bound Brook.

Under date of January 22nd, 1915, the Bound Brook Water Company filed a new schedule of rates for metered

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service, applicable throughout the entire territory served by the company. A new rate for fire hydrant service was also filed. This was set down for consideration by the Board at its meeting at the State House, Trenton, on February 23rd, 1915. On that date, objection was made to the filing of the rates, by the representatives of the Borough of Bound Brook, and the matter was continued to March 30th, and was again continued to May 11th, for the taking of testimony concerning the valuation of the property, and the earnings and expenses of the company.

ORGANIZATION :

The Bound Brook Water Company was organized October 6th, 1887, and commenced furnishing service about September 1st, 1899. Service was extended into East Bound Brook in 1892, and into South Bound Brook in 1911.

TERRITORY SUPPLIED :

The Bound Brook Water Company supplies the Borough of Bound Brook, the Borough of South Bound Brook, and the Borough of Middlesex, which was formerly part of Piscataway Township and generally known as East Bound Brook. Some service is also supplied in Bridgewater Township, from the transmission lines carrying water from the collecting reservoirs at Chimney Rock to Bound Brook. Bound Brook had, in 1890, a population of 1,462. At the present time the company is supplying service to territories in the following named municipalities. The populations of the territories served are estimated as follows:

In Bound Brook	4,050
In South Bound Brook	1,200
In Middlesex Borough	200
In Portion of Bridgewater Township	50

Making a total population served by the company of 5,500.

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CAPITALIZATION :

The company commenced business with a plant which it is understood cost about \$30,000, the system at that time consisting of a simple gravity system, with one reservoir located near Chimney Rock. At the present time, the capitalization is as follows:

Stock	\$100,000
Bonds	50,000
Total of	<u>\$150,000</u>

The stock was sold at a premium of \$11,644; the bonds were sold at par, and the plant now in existence represents expenditures from proceeds of stock and bond sales, amounting to \$161,644.

VALUATION :

The entire property has been inventoried and appraised, and the valuation of the property, as of December 31st, 1914, was submitted in detail. Report on the valuation of the physical property shows a cost to reproduce new of \$178,548, with an accrued depreciation of \$24,287, leaving a present value of \$154,261. The above figures include only the present value of the small amount of materials and supplies on hand at the present time, and do not include any allowance for working capital, legal expenses, the cost of organization and obtaining franchises, early losses, or any other elements not strictly pertaining to the physical property. Estimates have been made of the costs of perfecting the organization of the company, obtaining the necessary franchises, etc., and for this we have estimated as follows:

The charges to organization account in connection with the bond issue were \$803.50; on the same basis, the charges to this account, in connection with issues of stock and temporary loans are estimated to have been probably \$1,750.

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The various legal expenses, obtaining of the charter, etc., are estimated at \$2,450. These items total approximately \$5,000. Analyses of the earnings and expenses of the company indicate that an allowance of \$4,000 for working capital would be fair. We have estimated the total accrued depreciation in this property at \$24,287. Some of this has been charged on, but it is estimated that the amount of depreciation not charged off is not less than \$13,000, and as a part of the development cost, we are including this amount of the unearned depreciation. Under all the circumstances, it does not appear to be necessary to include any other elements in arriving at the present valuation of the company's investment. Total valuation is therefore made up as follows:

Physical property (present value)	\$154,261
Cost of organization and obtaining franchises	5,000
Working capital	4,000
Development costs	13,000
	<hr/>
	\$176,261

BASIS FOR RATES:

Before accepting the above value as the basis upon which to predicate rates, some analysis must be made to determine to what extent the property owned by the company is used and useful in the service of its present customers. In the record for the hearing of March 30th, 1915, Mr. Herbert testified (page 111) to the general effect that the standpipe located on the top of the mountain, and the force main carrying water to it, were not needed in connection with the company's present operation.

From the report on the valuation, we find that the total present value allowed for the standpipe and force main is \$5,817. Deducting this from the total value of the property,

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we obtain as the basis upon which to predicate rates, the amount of \$170,444.

SHALL THE TERRITORY SUPPLIED BY THE COMPANY BE CONSIDERED AS A WHOLE, OR SHOULD EACH MUNICIPALITY BE CONSIDERED BY ITSELF?

At the hearing, some question was raised by the objectors to the inclusion of South Bound Brook with the Borough of Bound Brook in considering the profitableness of the operations of the company. In order to determine the justification of such a position, the following table has been prepared, which shows in each municipality the mileage of distribution mains, the gross revenues, the revenues per mile of distribution main, the number of hydrants, hydrants per mile of main, the average spacing of hydrants, the value of distribution mains, and the gross revenue per dollar of valuation in mains.

TABLE I

	Bound Brook	East Bound Brook.	South Bound Brook.
Miles of mains	8,217	2,555	1,565
Gross revenues	\$14,386	\$3,961	\$840
Revenue per mile	\$1,750	\$1,550	\$537
Hydrants	64	17	18
Hydrants per mile	7.8	6.6	11.5
Sewer flush connections	26	0	0
Sewer flush revenues	390	0	0
Average spacing of hydrants	677 ft.	793 ft.	460 ft.
Value of mains	\$22,476	\$6,067	\$5,992
Revenue per \$1 of value of mains.....	64c	65c	14c

From the above table it will be seen that the revenue in South Bound Brook is clearly below that from Bound Brook in proportion to the investment in the distribution system, but that East Bound Brook may be included with Bound

In re Rates—Bound Brook Water Co.

Brook. For the purpose of determining in general the reasonableness of the rates to Bound Brook customers, we will deduct from the revenues the money received from South Bound Brook, and from the value upon which to predicate rates, the investment made for the purpose of supplying South Bound Brook.

Value base	\$170,444
Deduct investment for South Bound Brook	14,590
<hr/>	
Value upon which to predicate rates in Bound Brook and East Bound Brook	\$155,854

FINANCIAL RESULTS:

TABLE 2.

Total revenues from sale of water, 1914	\$17,187.41
Deduct revenues from sale of water in South Bound Brook..	840.22
<hr/>	
Revenues from sale of water in Bound Brook and Middlesex	\$16,347.19
Profit from tapping and sale of material.....	237.22
<hr/>	
Total Operating Revenues	\$16,584.41
Operating Revenue Deductions:	
Proportionate part of operating expenses—95.1%	
Less general amortization	\$7,244.15
Annual amortization as per valuation	1,912.00
<hr/>	
	9,156.15
<hr/>	
Operating income	7,428.26
Non-operating income (interest revenues)	50.56
<hr/>	
Gross income	7,478.82
Rent of property not included in valuation	15.00
<hr/>	
Amount available for payment of interest and dividends....	7,463.82
6% return on above value of \$154,854	9,291.24
<hr/>	
Deficit	\$1,827.42
<hr/>	

In re Rates—Bound Brook Water Co.

It will be seen that the revenues from Bound Brook, when related to the investment, are at least not excessive, and in fact, show a deficit below a rate of 6% on the fair value of the property devoted to the use of the customers.

DIVISION BETWEEN FIRE PROTECTION AND PRIVATE SUPPLY:

For fairness, consideration must be given to the respective revenues received from fire protection and from private consumers. Both the investment and the operating and fixed expenses must be properly allocated to the two purposes. It is in evidence that investments in 1909, amounting to \$2,000 and in 1911, amounting to \$19,323.24, were largely for the purpose of maintaining pressures. The maintenance of pressure may have been partly for fire protection and partly to compensate for the increased losses in pressure due to the increase in the use of water generally throughout the territory. In any case, the hydrants and connections are chargeable to fire protection exclusively. It is also probable that the excess of value in the distribution system over the value of somewhat smaller mains is properly chargeable to the fire protection system. At the present time, we do not consider it is necessary to definitely determine this total.

NECESSITY FOR INCREASED RATE:

From the testimony, it is found that during the greater portion of the year the water is obtained from certain streams lying on the top of the mountain back of Bound Brook. Owing to the scarcity of water in these streams during certain months of the last few years, it became necessary to seek other sources of supply, and this necessity led to the driving of wells and the establishment of a pumping plant on the Middle Brook.

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At times of heavy rains the mountain streams were very turbid, and this again led to the use of the well water in place of that from the streams on the mountain. The use of the wells and pumping plant involve an increased investment, and an increased operating cost. With a view to reducing the pumping expense and utilizing the gravity system as much as possible, a filtration plant was installed, so located as to filter the mountain water on its way from the elevated reservoirs to the town. This involved an additional investment and a slight additional operating cost.

It should be noted that the additional investment involved in the installation of the filtering plant does not materially increase the company's ability to supply additional customers, but is an additional cost imposed upon the company by the necessity of furnishing adequate service to its present customers.

The company has been able during the past few years to pay dividends at the rate of 6% upon the stock. The bonds which were issued a year ago carry interest at 5%, and were issued at par for the purpose of funding debts incurred for construction purposes.

In filing a schedule providing for increased rates, the company denies that it is seeking to increase its gross revenues from the private consumers, although calling attention to the increased cost of service due to the installation of the filtering plant.

During the past few years the scarcity of water in the mountain streams has made it necessary to conserve the supplies, and on this account the company has adopted the policy of furnishing water through meters, and has commenced the installation of the meters. Meters so far installed show that the revenue per customer under the present meter rate will be lower in most cases than the revenue under the old flat rate.

In re Rates—Bound Brook Water Co.

The company contends that it merely wishes to obtain from private consumers approximately the same amount of net revenue which it has heretofore received.

With reference to fire protection, the company calls attention to the additional investment made for the express purpose of maintaining pressure, and contends that under all the circumstances, it is entitled to a higher rate for the fire protection service rendered the municipality.

Evidence was submitted showing that the pressures are ample for all fire purposes, and the service from this standpoint is entirely adequate.

From the analysis made above, it is clear that the cost of furnishing fire protection is greater than has been realized by either the company or the municipal authorities, and the failure to charge for each class of service approximately in accordance with its proportionate cost results in an improper discrimination towards other classes of customers.

The Board is therefore of opinion that there should be some increase in the rate charged for fire protection service.

EFFECT ON NEW SCHEDULE:

It is almost impossible to predict the results of the application of the new schedule. Increased unit rates for service do not necessarily result in increased total charges, due to the fact that under flat rates water is frequently wasted, and such waste is usually eliminated when water is furnished on a meter basis. Another result is that when water is furnished on a flat or fixture rate basis, lawn and street sprinkling are often indulged in by the consumers, who more or less curtail this part of their consumption when meters are installed.

As stated above, the installation of meters up to this time, about 57 in number, shows the following:

In re Rates—Bound Brook Water Co.

Only four involve increases over the old flat rate, and 53 call for decreases.

The application of the new schedule to the 57 customers referred to would involve increases to 11 over the flat rate previously paid, and decreases to 46.

At the present time, there are approximately 663 customers receiving service at flat rates. Of these, 137 have but one fixture, and are paying but \$8.00 per annum.

It is the opinion of the Board that those customers having but one fixture should be allowed to receive service at the present rate of \$8.00, excepting where it is shown that an excessive amount of water is used, and in these cases the company may be allowed to exercise its right to install meters.

There are 90 customers whose flat rates have ranged from \$9.00 to \$14.00, who will be furnished with service through meters having 1½" connection, which carries with it a minimum charge of \$10.00 per annum.

There are 137 customers who are now paying flat rates ranging from \$15.00 to \$19.00, who will be furnished with meters having a ¾" connection, carrying with it a minimum charge of \$15.00 per annum.

The balance of the flat rate customers have been paying rates as follows:

183	customers	have	been	charged	from	\$20	to	\$24	each	per	annum
60	"	"	"	"	"	\$26	"	\$28	"	"	"
30	"	"	"	"	"	\$30	"	\$36	"	"	"

and the remaining 19 customers have been paying bills ranging from \$40.00 to \$150.00 each per annum.

Until an examination of the plumbing is made, it will be impossible to state just what minimum charge will apply to each of these customers who have heretofore been paying rates ranging from \$20.00 upward, as the minimum

In re Rates—Bound Brook Water Co.

charge will depend upon the size of meter and the size of service pipe.

CONCLUSIONS:

The Board is not satisfied, however, that the increase at this time of the base rate from 25c per thousand gallons, which is now charged, to the rate of 35c per thousand gallons is just and reasonable under all the circumstances. Rates charged, without reference to cost, must not exceed the value of the service, and if the value of this service may be determined by comparison with the rates charged by other companies, the rate of 35c per thousand gallons appears to be excessive.

The Board RECOMMENDS a rate schedule made up as follows, and upon the filing of the same will allow it to go into effect with the quarter commencing January 1st, 1916.

30c. per M. gallons for the consumption in each quarter up to and including 50M. gallons;

25c. per M. gallons for the excess consumption in such quarter over 50M. gallons up to and including 100M. gallons;

12½c. per M. gallons for the excess consumption in such quarter over 150M. gallons.

The minimum quarterly charge for water by meter measurement proposed by the company, which is as follows, may also be filed:

Water served through	5/8"	meter with	1/2"	connection	.....	\$2.50
"	"	"	5/8"	"	" 3/4"	3.75
"	"	"	3/4"	"	.....	5.00
"	"	"	1"	"	.....	6.25
"	"	"	1 1/2"	"	.....	7.50
"	"	"	2"	"	.....	10.00
"	"	"	3"	"	.....	15.00
"	"	"	4"	or larger meter	.....	25.00

Inspector's Report—Bridge, Woodbridge Creek.

The Board will also allow the filing of the rate of \$20.00 per annum for each hydrant.

The Board is of the opinion that this schedule should remain in effect for at least one year in order that a fair trial may be made to determine the effect on the company's gross revenue of the increased schedule of rates.

Dated October 26th, 1915.

No. 304.

**IN THE MATTER OF INSPECTOR'S REPORT ON BRIDGE OVER
WOODBIDGE CREEK, MAURER, MIDDLESEX COUNTY, NEW
JERSEY.**

ORDER.

It appearing to the Board from evidence duly submitted to it that the bridge over Woodbridge Creek at Maurer, in Middlesex County, New Jersey, is in such condition that it is unsafe for cars of the Public Service Railway Company to be operated over said bridge,

The Board after hearing, upon notice, **FINDS AND DETERMINES** that in the operation of its cars across the bridge over Woodbridge Creek, at Maurer in Middlesex County, New Jersey, the Public Service Railway Company does not furnish safe, adequate and proper service.

The Board **HEREBY ORDERS** and directs the Public Service Railway Company to stop the operation of its cars over said bridge, pending repairs to the same to be approved by this Board.

Because of the statute which requires notice of twenty days before the Board's order may become effective, the effective date of this order is made November seventeenth,

Public Service Railway Co.—School Tickets.

one thousand nine hundred and fifteen, but the Board RECOMMENDS to the Public Service Railway Company that it immediately cease the operation of its cars over this bridge.

Dated October 28th, 1915.

No. 305.

IN THE MATTER OF THE DISCONTINUANCE BY PUBLIC SERVICE RAILWAY COMPANY OF THE SALE OF TICKETS AT A REDUCED RATE FOR TRANSPORTATION OF PUPILS IN ATTENDANCE AT AND TRAVELING TO AND FROM SCHOOLS OVER ITS SEVERAL LINES.

To hold that the business school pupil of school age shall be denied the right to the same rate of fare as other children of school age is to discriminate against him. To hold that he shall be denied this right because he pays for an education during the years of his school age, the more quickly to befit himself for a useful occupation, is in effect to penalize him for doing the thing, without expense to the state, that the state aims to do in pursuance of its public policy.

It is the judgment of the Board that the Public Service Railway Company has not shown that the increase, change or alteration, which would be effected by the discontinuance of the sale of tickets for the transportation of pupils in attendance at schools, and traveling to and from schools over its several lines is just and reasonable.

L. D. H. Gilmour, for the company.

Thomas A. Davis, for complainants.

F. H. Sommer, for the Commission.

On September 22nd, 1914, the Board entered an order suspending, for a period of two months, the increase in rates resulting from a discontinuance by the Public Service

Public Service Railway Co.—School Tickets.

Railway Company of the sale of tickets for the transportation of pupils in attendance at schools, and traveling to and from schools over its several lines. The Board fixed October 9th, 1914, Newark, as the time and place for hearing upon the question whether the increase is just and reasonable. On this date, on application of the Public Service Railway Company, the hearing was adjourned until November 20th, and on the latter date was ordered continued until the "first Friday in July, 1915, that the Board meets in Newark for formal hearings." Subsequently the time and place of hearing were made July 12th, 1915, at Newark. Hearing was held on that date and also in the City of Jersey City on July 14th, 1915, following which the matter went to conference.

Following the adoption by the Board of its order of suspension the respondent restored the old rate and agreed that no attempt would be made to discontinue the same because of the continuance of the date for hearing beyond the statutory period when, pending determination by the Board, its order of suspension can remain effective. The rates which were discontinued are now in effect and the issue to be determined is whether the increase, change or alteration which would result from their withdrawal would be just and reasonable and should be approved by this Board.

For many years it has been the practice of the railway company, and its predecessors, to sell tickets to school children at less than the regular five cent rate, the school rate being about three cents. In many cases municipal ordinances passed before the enactment of the Public Utility Law required the company to transport school children at the reduced fare. The duty of the company to issue such tickets to the pupils of public schools is not questioned, but it is insisted that there should be no obligation on the

Public Service Railway Co.—School Tickets.

part of the company to continue the issue of such tickets to those attending business schools; (a) because such reduced rate to these schools results in an unreasonable preference; (b) because the regular fare of five cents to such persons is reasonable; (c) because a reduced rate to such persons is unjust and unreasonable to the company and to the other patrons of the railway; (d) because a classification of those to whom the reduced rate school ticket is issued is itself unreasonable if it includes those attending private business schools.

In 1911, immediately after the institution of this Board, by statute, the railway company made an attempt to discontinue the issuance of all school tickets, but the Board suspended the proposed increase in fares and upon appeal by the company to the Supreme Court the order of suspension was sustained, the Court holding that such rate and such classification was not an undue and unreasonable preference. (*Public Service Railway Co. vs. Public Utility Commissioners*, 81 N. J. Law 363.) As the present effort on the part of the company will result, if consummated, in an increase of fares, the burden of proving the necessity for and reasonableness of such increase rests upon the company. If it is an effort to force out of a classification, which has had the sanction of the company and the public for many years, a part of the class, the burden of showing the reasonableness of such action on its part likewise falls upon the company. The only evidence offered in support of either proposition is the uncontroverted testimony that the business schools, pupils of which would be affected, are conducted for profit. In essence, therefore, the company's argument is as follows:

All school children, except those attending business schools, are entitled to a reduced rate of transportation; those attending business schools should pay an increased

Public Service Railway Co.—School Tickets.

rate because such schools are conducted for pecuniary profit. The fallacy of the argument lies in the assumption that because the teacher may receive a stipend from the pupil for instruction, the latter shall be deprived of a right to which otherwise he would be entitled. There is probably nothing that so manifests itself in the public policy of the state as its fixed purpose to further the education of the young to the end that they may be fitted to assume the duties and responsibilities of citizenship. The citizenship at which the state aims is most likely to be found when the largest possible number are employed in useful pursuits. The business schools supplement the grammar school education, which the state gives, by giving a training for commercial employment to those of High School age who cannot or will not avail themselves of the High School course which the state furnishes. The business school course is shorter than the High School course. The end obtained, however, is largely the same, namely the development of a citizenry intelligent and useful. To hold that the business school pupil of school age shall be denied the right to the same rate of fare as other children of school age is to discriminate against him. To hold that he shall be denied this right because he pays for an education during the years of his school age, the more quickly to befit himself for a useful occupation, is in effect to penalize him for doing the thing, without expense to the state, that the state aims to do in pursuance of its public policy.

The Supreme Court in its opinion in the case above referred to indicated that the practice of issuing school tickets to school children involved neither injustice nor discrimination; the company, either by agreement with the municipalities or on its own volition without agreement, having constituted itself an auxiliary of the state in furthering the cause of education. The company having failed to show

Borough of Butler—Approval of Ordinance.

that any reasonable distinction can be made between business school pupils and those of other schools, the Supreme Court decision would seem to include such pupils as among the school children to whom the giving of a reduced rate is not unreasonable nor preferential.

It is the judgment of the Board that the Public Service Railway Company has not shown that the increase, change or alteration, which would be effected by the discontinuance of the sale of tickets for the transportation of pupils in attendance at schools, and traveling to and from schools over its several lines, is just and reasonable; the Board is not satisfied that such increase, change or alteration is just and reasonable and disapproves of the same.

Dated November 9th, 1915.

No. 306.

IN RE APPLICATION OF BOROUGH OF BUTLER FOR APPROVAL OF
AN ORDINANCE OF THE TOWNSHIP OF POMPTON, COUNTY
OF PASSAIC.

Consent to the erection of poles and the stringing of wires for the purpose of conducting electric current to supply private consumers in the manner prescribed in the ordinance, clearly involves "person or property," and personal rights and imposes an additional burden on the land of abutting owners. The action of the municipal authorities of the Township of Butler in granting the privilege as provided for in the ordinance was judicial in quality and being judicial notice was requisite regardless of the statute.

The ordinance submitted for approval having been passed without notice is held to be invalid.

Application is made to this Board by the Borough of Butler for the approval of an ordinance of the Township of Pompton entitled, "An ordinance granting to the Bor-

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ough of Butler in the County of Morris and State of New Jersey the consent, right and privilege of constructing, maintaining and operating an electric light, heat and power plant, and distribution and transmission system on certain streets, avenues and highways in the Township of Pompton, in the County of Passaic.”

The statute under which the Borough of Butler appears to have proceeded and also under which application for approval is made is Chapter 336, Laws of 1915, an act entitled, “A supplement to an Act entitled, ‘A General Act Relating to Boroughs (Revision 1897)’ ” which, among other things, provides:

1. “Subject to the approval of the Board of Public Utility Commissioners it shall be lawful for the council of any borough of this state, owning and operating an electric light plant,

b. To supply electric current for heat, light or power purposes *for public or private use*, to the inhabitants individually or to any private corporations within any adjoining municipality; *provided, however, that the governing body of said adjoining municipality shall by resolution consent thereto.*”

The proceedings adopted in the enactment of the ordinance, approval of which is asked, are those incident merely to the formal passage of the ordinance by the municipality, the Township of Pompton.

The statute (Chap. 336, Laws 1915) under which the ordinance was adopted does not provide for notice to the public of its passage and no notice was given either by publication or otherwise. Is then, *notice* required? Or is the formal passage of the ordinance *without notice* by the municipality all that is required to give the “consent” to the Borough of Butler as provided for in said ordinance?

For if, ignoring the statute, *notice* was a prerequisite to its legal passage, the consent given thereunder is invalid

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and this Board would therefore feel bound to withhold its approval.

Whether or not *notice* is required depends on the character of the municipal action; that is to say, whether the municipal action is judicial or legislative.

In *Moore vs. Haddonfield*, 62 N. J. L., 386, Mr. Justice Garrison, delivering the opinion of the court, page 388, says:

“This is the pivot upon which the case turns, and not upon the statutory requirement that notice be given. For if the municipal action be one for which, but for the statute, notice was not required, then the statutory requirement extended only to the original ordinance. When complied with, it was satisfied and at an end. If, on the contrary, regardless of the statute, notice was requisite because of the judicial quality of the act, then so long as that quality inheres notice will be a necessary prerequisite to its exercise. In fine, if the statute had been silent as to notice, judicial action would still have required notice, while legislative action would have called for none.”

And further at page 389:

“The inquiry, therefore, is whether the action of the Council under the statute of 1893 was legislative or judicial.”

“The difficulties of formulating a universal solvent of this question are rehearsed rather than removed by the opinions that deal with it. It is therefore, to be assumed that the perplexity is inherent in the subject.”

“An examination of these decisions will show that where ‘person or property’ or ‘personal rights’ are clearly involved the rule is plain, but that it perceptibly shades off whenever debatable ground is reached. I do not see, however, that there is in the present case much ground for debate. As to all public rights in the street, the municipal action was clearly legislative. *It became judicial only* in case it imposed an additional burden upon the land of the abutting owners.”

What then is the character of the municipal action here submitted? Is it legislative or judicial? Inquiry into its character becomes necessary and material.

The ordinance, Section 1, provides:

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“Subject to the terms and conditions of this ordinance, there is hereby granted to the Borough of Butler, in the County of Morris, *the consent, right and privilege of constructing, maintaining and operating an electric light, heat and power plant, together with the necessary distributing, conveying and transmitting means and system, such as overhead wires and cables, and underground cables, subways, conduits, ducts, appliances and appurtenances of every kind that may be necessary, useful and usually connected therewith, and necessary poles and cross-arms, in, on, through, under, along and above all and any of the parks, highways, parkways, streets, roads and avenues of the Township of Pompton, in the County of Passaic and State of New Jersey, embraced in or included within the corporate limits of Fire District No. 1 of the said Township of Pompton, for the usual purposes of supplying light, heat and power to purchasers, public and private, wherever applied for within the limits of said District above specified, and for otherwise disposing of the product of said light, heat and power plant as may be necessary.*”

Strictly, then, the ordinance authorizes the Borough of Butler to erect poles and cross arms to be located in the parks, highways, parkways, streets, roads and avenues of the Township of Pompton with wires and cables, including underground cables, subways, conduits, &c., for the purpose of supplying light, heat and power to and in the manner prescribed in said ordinance.

Does this *grant or privilege* impose an additional burden upon the land of the abutting owners?

In *Andreas vs. Gas and Electric Company*, 61 Eq. 69,

Pitney, V. C. at page 69 and 77 says:

“The object of the bill is to obtain an injunction from this Court to prevent the defendant from erecting poles to support electric wires in front of the complainant’s land.”

“The question, then, is whether the placing on the public sidewalk, the fee of which with the adjoining property is owned by the complainant, poles for that purpose will be a taking of his land. I am of the opinion that it will be, in the sense that it will impose upon it a greater burden than can justly be implied from the laying out of a highway across, or the dedication of a part of his land for the purposes of a highway. As pointed out by Vice-Chancellor Van Fleet in the Halsey case, the lighting of streets may be considered as necessary in order to make them

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safe for use at night. But this consideration does not reach the lighting of the interior of the houses built along their route."

"It is a matter of common knowledge that the larger the pole, and the more numerous its arms and wires, the greater the nuisance to the premises before which it is erected. So that it is impossible to say that it is no greater injury to the owner of the land to erect thereon poles with arms for the purpose of conducting a current of electricity sufficient to be used for the purpose of power and for private lighting in a large district, than the erection of poles for a more restricted purpose."

And this doctrine was approved in

Taylor vs. Public Service Corporation, 75 Eq., 371, affirmed C. of E., 78 Eq., 300.

Thropp vs. Public Service Electric Corporation, 83 Eq., 564, affirmed C. of E., 93, Atl. 693.

The ordinance under review provides for the erection of poles and stringing of wires

"for the usual purposes of supplying light, heat and power to purchasers, public and private, whenever applied for within the limits of said district above mentioned."

It would seem, therefore, that the "consent" to the erection of poles and the stringing of wires for the purpose of conducting electric current to supply private consumers in the manner prescribed in the ordinance, clearly involves "person or property" and personal rights and imposes an additional burden on the land of abutting owners. So that the action of the municipal authorities of the Township of Pompton, in granting the privilege as provided for in the ordinance was judicial in quality and being judicial, notice was requisite regardless of the statute.

The ordinance submitted for approval, therefore, having been passed without "notice," the "consent" given thereunder is invalid and the Board is compelled to withhold its approval.

Rates—Newton Gas and Electric Co.

The Board withholds its approval of the ordinance and the petition is DISMISSED.

Dated November 9th, 1915.

No. 307.

IN RE SCHEDULE OF RATES FOR ELECTRICITY—NEWTON GAS
AND ELECTRIC COMPANY.

The Board determines that the company has not borne the burden of proof to show the increase in the rates proposed is just and reasonable. The proposed increase in rates; the continued inefficiency of the service shown by the testimony in this proceeding, and in the proceeding involving complaints as to service, and the constant friction between the people of the municipality and the receiver in consequence of such continued inefficient service, raise a problem of grave import to the people of Newton and to those who are financially interested in the company.

Long continued and patient effort by the Board and its engineers to secure for the community the character of service to which it is entitled has resulted in some improvement, but the service rendered falls far short of a safe, adequate and proper service. The Receiver contends that without the increase in the rates proposed, which increase is now disapproved by the Board, further improvement in the service furnished by him is impossible. In the judgment of the Board the problem admits of but one solution, and that is the sale of the property in chancery proceedings. Through such sale, a purchaser may, perhaps, be found who, paying a reasonable price for the plant, and investing the added money required for its readjustment, will be able to furnish the community a satisfactory service at a reasonable rate.

W. A. Dolan and Albert C. Wall, for the Company.

Henry T. Kays and Lewis Van Blarcom, for the Town of Newton.

The Receiver of the Newton Gas and Electric Company filed with the Board a new schedule of rates for electric service. Pending investigation as to the reasonableness of

Rates—Newton Gas and Electric Co.

the proposed rates, the old schedule of rates has continued in effect.

The Newton Gas and Electric Company was formed by the consolidation of the Newton Gas Light Company and the Newton Electric Light, Heat and Power Company, February 14th, 1901.

The company was placed in the hands of a receiver September 27th, 1910, since which time the property has been operated by the receiver.

The original plant of the electric company consisted of steam driven Edison generators. The distribution system was a 3-wire Edison system, operating at 110-220 volts.

About the year 1904, the Edison direct current generators were removed, and in their place alternating current generators were installed. The primary lines from these generators were extended to a small number of points in the town, at which were located comparatively large transformers feeding into the original system of Edison "Mains." The alternating current generators were driven by gas engines of the American Crossley pattern manufactured by the Power and Mining Machinery Company. Two of these units were installed in the original plant. The plant operated under these conditions until 1910, when plans were made for removing the plant to a location where a railroad siding could be obtained and where better foundations could be constructed, there having been some complaint with regard to the instability of the foundations at the old location.

It appears from the testimony (March 9th, 1914, p. 41) that no dividends have ever been paid on the stock of the present company. Interest, however, was paid on the outstanding bonds. No funds were available to pay for the cost of removing the plant to a new location, which the

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management of the company had decided was necessary for the proper and efficient operation of the plant.

The property was, therefore, placed in the hands of a receiver, with a view to protecting the interests of the stock and bond holders, and a plan was arranged under which Receiver's certificates were issued to meet the costs of moving and of certain additional machinery.

The arrangement further contemplated the taking up of the Receiver's certificates, using funds which would otherwise be required for the payment of interest.

The interest on outstanding bonds has continued to accrue and is to be paid off after the Receiver's certificates have been taken up. The larger part of the cost of moving the plant is a replacement charge, and could not be permanently capitalized.

Testimony was taken at several hearings (June 24, 1914, March 9th, 1915, May 14th, 1915, June 16th, 1915) at which objections were made by the representatives of the Town to the approval by the Board of any increases in the rates charged. These objections were based upon charges that service had been and still was inadequate.

With reference to inadequate service, the Board, under date of April 21st, 1914, ordered the company to make certain improvements to the physical property. Minor improvements required by such order have been made, but required changes in machinery have not been made.

Testimony was submitted by the objectors to the effect that some improvement had been made in the service rendered, but that service was still inadequate.

As stated above, no dividends have ever been paid upon the stock of this company, but interest has been paid on the outstanding bonds up to the time of the Receivership. Examination of the testimony and exhibits shows that this property has been overcapitalized since the consolidation

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in 1901 to such an extent that the inability to pay dividends on stock is no indication of the lack of proper earning power on the part of this company under the existing rates.

Statements submitted by the company (Exhibits P-6 and P-7) have been analyzed. These statements show the financial results, revenues and expenses for each year from 1902 to 1911. From 1911 to the present time, the annual reports submitted by the company are available. This analysis shows that the company has classified as "Additions and Betterments" amounts in accordance with the following schedule.

TABLE "A."

ADDITIONS AND BETTERMENTS—1902-1913.

	<i>Electric Dept.</i>	<i>Gas Dept.</i>
1902	\$1,710	\$1,221.05
1903	329	311.86
*1904	23,635	**2,930.73
*1905	10,853	**7,344.57
1906	1,562	3,262.40
1907	560	1,080.89
1908	633	598.04
1909	276	564.89
1910	1,301	959.03
*portion 1911 ..	27,278	**14,722.59
1912	2,969	2,280.85
1913	1,396	353.39
Total	\$72,502	\$35,630.29

Attention is called to the large expenditures in 1904 and 1905 for electrical plant and to the large expenditure in 1911 for the same purpose. Reference has already been made to the expenditures in these years for new plant, but as also stated a large part of the expenditure in 1904 and

*Total replacements taken as \$45,000.

** " " " " \$15,000.

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1905 was really for replacement purposes and some portions of the expenditures in 1911 were for a similar purpose.

Using the valuation submitted at the hearings and deducting the additions and betterments made from time to time, the following Table B is made up:

TABLE "B."

	<i>Elec. Dept.</i>	<i>Gas. Dept.</i>
Value (new) Jan. 1st, 1915.....	\$98,499	\$91,950
Additions and betterments, 1902-1913.....	27,502	20,630
	<hr/>	<hr/>
Value, as of January, 1902.....	\$70,997	\$71,320
Value (new) Jan. 1st, 1915.....	98,499	91,950
Estimated value (new), Jan. 1st, 1902.....	70,997	71,320
	<hr/>	<hr/>
Sum of values	\$169,496	\$163,270
Average valuation during period.....	\$84,748	\$81,635
Annual depreciation, 1915.....	3,597	1,857
Estimated annual depreciation, 1902.....	2,593	1,440
Average annual depreciation, 1902-1915....	3,095	1,648

Table C has been made to show the relation between the average net income and the average value of plant, from 1902 to 1915. It is not contended, however, that the values used in Table C are the values upon which rates should be based.

TABLE "C."

	<i>Elec. Dept.</i>	<i>Gas. Dept.</i>
Average value (new) 1902-1915.....	\$84,748	\$81,635
Estimated accrued depreciation.....	22,034	9,888
	<hr/>	<hr/>
Average present value, 1902-1915.....	\$62,714	\$71,747
Average operating income, 1902-1913,.....	4,709	3,348
Per cent. operating income is of present value	7.50%	4.66%
Annual rate of depreciation, 1915.....	3.65	2.02
	<hr/>	<hr/>
Average rate of return	3.85%	2.64%

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Table D-1 has been made up from data for the year 1913 to show relation between net revenue and gross revenue taking a number of New Jersey companies where the conditions are somewhat comparable. Table D-1 shows that the operating ratio of ten companies averages 66.79%, while the operating ratio of the electric department of the Newton Gas and Electric Company is apparently 61.24%.

TABLE "D-1." DATA FOR 1913.

	<i>Newton G. & E.</i>	<i>Pleasant- ville H. L. & P.</i>	<i>Wash- ington Elec. Co.</i>	<i>Hacketts- town Elec. Co.</i>
Operating revenues	\$20,977	\$24,031	\$14,850	\$16,946
Revenue deductions	12,836	15,138	10,774	10,179
Operating income	\$8,141	\$8,893	\$4,076	\$6,767
Income per cent. of op- erating revenues	38.76	37.05	27.45	39.9
Operating ratio.....	61.18%			

	<i>Opt. Revenue</i>	<i>Optg. Rev. Deductions excluding deprec. chgs.</i>
Flemington	\$10,702	\$8,088
Hammonton	12,756	8,684
Monmouth Ltg.	14,041	10,663
Toms River	12,215	9,722
Washington	14,850	10,774
Hackettstown	16,946	10,179
Lambertville	18,360	12,548
Pleasantville	24,031	15,138
Milburn	31,559	19,523
Cape May	42,301	26,767
Averages	\$19,776	\$13,208

Operating ratio—10 companies, 66.79%.

Table "E" gives the gross revenue and the operating expenses per kw-hr. The first item gives the average for eight companies; the second shows the gross revenue and operating expenses of the Newton Company, and the last

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item gives the average of fourteen other companies, given as Table D-2. From Table E, it appears that the gross revenue of the Newton Company per kw-hr. sold is lower than that of a large number of companies, and that the operating expense is about midway.

TABLE "D-2." DATA FOR 1914.

	<i>Revenues.</i>		<i>Expenses.</i>	
Ocean City Elec. Lt. Co.....	\$64,471	6.43¢	\$42,746	4.74¢
Consolidated Gas Co.	109,811	8.62¢	63,135	4.96¢
Boonton Electric Co.	28,308	7.89¢	23,839	6.64¢
Commonwealth Water & Lt. Co.	82,903	8.74¢	52,932	5.58¢
Eastern Penna. Power Co.....	155,563	6.27¢	99,653	4.02¢
Washington Elec. Co.	14,831	7.96¢	14,286	7.65¢
Rockland Elec. Co.	43,671	9.36¢	33,496	7.18¢
Sayreville Elec. Lt. & Pr. Co....	11,735	9.63¢	11,787	9.67¢
Hammonton Elec. Co.	14,606	7.16¢	9,894	4.85¢
Electric Co. of New Jersey	55,211	5.23¢	44,891	4.25¢
Morris & Somerset Elec. Co.....	151,704	5.52¢	90,161	3.28¢
Monmouth Lighting Co.	18,112	9.97¢	12,754	7.02¢
Millville Elec. Lt. Co.....	20,117	6.40¢	25,863	8.23¢
Total	\$771,043	99.18¢	\$525,437	78.07¢
Average		7.63¢		6.01¢
Newton Gas & Electric Co.....		6.47¢		*5.90¢

*Average resulting from using Board's allowance for depreciation instead of company's.

TABLE "E."

	<i>Gross Revenue per kw. hr.</i>	<i>Expenses per kw. hr.</i>
*Average of eight companies (1913)....	6.08¢	3.02¢
Newton Gas & Elec. Co. (1913)....	6.01¢	4.72¢
(1914)....	6.47¢	5.90¢
Average of 14 companies (1913)....	7.58¢	5.06¢
(1914)....	7.63¢	6.01¢

*The first item gives the average for eight companies, which are the following:

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Atlantic City Electric Company,
Cape May Light & Power Co.,
Cinnaminson Elec. Light, Power & Heating Co.,
Lakewood Water, Light and Power Co.,
Middlesex & Monmouth Elec. Light, Heat & Power Co.,
Pleasantville Heat, Light & Power Co.,
Public Service Electric Co.,
Rockland Elec. Co.,

each of which had in 1913 a lower average operating expense per kw. hr. than that reported by the Newton Gas & Elec. Co.

Table F. gives the result of an analysis of the operating expenses during the ten years from 1902 to 1911, showing that the average operating ratio is about 68.3% for the electric department, and 69.4% for the gas department. The average operating income during that period appears to have been sufficient to meet depreciation charges, and in addition a small return on the investment.

TABLE "F."

Average for 10 years (1902-1911).

	<i>Elec. Dept.</i>		<i>Gas. Dept.</i>	
	<i>Amount</i>	<i>% gross revenue</i>	<i>Amount</i>	<i>% gross revenue</i>
Operating Revenue	\$14,132.65		\$11,826.29	
<i>Operating Revenue Deductions</i>				
Station wages	\$1,889.44	13.4	\$1,992.46	16.8
Coal and Oil	1,983.40	14.0	3,598.27	30.4
Station repairs	796.82	5.6	270.63	2.3
Other station supplies & exp.	635.09	4.5	119.04	1.0
Total production	\$5,304.75	37.5	\$5,980.40	50.5
Distribution & utilization..	1,242.49	8.8	411.68	3.5
General & miscellaneous....	2,638.96	18.7	1,357.48	11.5
Taxes	461.73	3.3	458.85	3.9
Total revenue deductions..	\$9,647.93	68.3	\$8,208.41	69.4
Operating income	\$4,484.72	31.7	\$3,617.88	30.6

Rates—Newton Gas and Electric Co.

As has been said, the changes in the physical plant made in 1904 and 1905 were of a very radical nature. Prior to that time, the plant had been operated by steam; subsequently by gas obtained from producers. Such a radical change could only have been justified because of greater efficiency in the production of electrical energy. Much is claimed for the higher fuel efficiency of the gas engine units. This higher efficiency, however, is frequently and with respect to this company's operations appears to be offset by higher fixed charges and by larger expenses for the maintenance of the gas engines and producers.

An analysis of the cost of generating current under the conditions existing since 1904 would be of great value, but owing to the lack of adequate information concerning output of the plant, it is impossible to make such an analysis.

The main wattmeters on the switchboard were out of order for a considerable period during the past four years; the annual reports submitted to the Board include the statement that information concerning the output was not available; testimony submitted at the hearings with reference to output or with reference to demand on the plant has been so elementary and incomplete that no definite facts can be ascertained regarding either the kilowatt demand upon the plant or the kilowatt hour output. We are, therefore, dependent upon such analysis as has been made up in the form of tables given above.

Some analysis has been made of the relation between the capacity of the plant under consideration and the amount of energy sold by the company. Comparisons of these figures with similar figures of other companies in this state have been made. (See above Tables). The Board is satisfied that the lack of revenue is not to be attributed to insufficiency in the rates charged per unit of energy. An in-

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crease in rates does not always bring a greater revenue. On the contrary, greater revenues are frequently obtained by a reduction in rates. The allegations of the citizens of Newton with regard to poor service are borne out by the facts, and the claimed insufficiency in revenue is largely attributable to inefficiency in service. Improvement in character of service may reasonably be expected to result in an increase in revenue without increase in the rates.

In view of the lack of accurate information concerning the output, it is necessary to reach our conclusions partly by comparison with other companies, and partly only by reference to the earnings and expenses of the Newton company.

The property in use by the company was inventoried and appraised. The result was submitted by the Board's engineer, and was carefully gone over by representatives of both the company and the municipality. In so far as the cost to reproduce the property is concerned, the appraisal as submitted is accepted.

Estimate of the accrued depreciation was also made, based, however, entirely upon a condition and age basis, and this estimate is also accepted.

Claim was set up by Mr. Runyon, of Runyon & Carey, employed by the municipality, that owing to unsatisfactory operation of the gas engines and producers, they should be valued at a scrap value only, and Exhibit O-1 submitted by Mr. Runyon is an analysis based upon the valuation made up in that way. With this contention, the Board is unable to agree. A valuation made up in this way cannot be made the basis for rates. It may well be that the investment involved in this plant is higher per unit of capacity than is the case in most steam plants, and it may also well be that for rate making purposes a value should be given based on the cost of constructing an efficient plant which could

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perform duty equivalent to that imposed upon the Newton plant, but to accept¹ as a basis for rates a value which ignores the investment necessary to create some kind of a plant would be clearly unfair.

Reference has already been made to certain comparisons of data relating to various electric light plants in this state. The data, which is given later, consists of the relation between the investment in generating plant, capacity of generating plant and peak load upon such plants. From the appraisals, which have been made by the Board's engineers from time to time, a table has been prepared which shows the estimated cost value of the mechanical and electrical equipment in the power stations.

Column 1 gives the name of the company referred to; Column 2 the rated kilowatt capacity of the plant, Column 3 is the cost per kilowatt of plant capacity, and Column 4 represents the cost per kilowatt of peak load.

Owing to the varying character of the plants in this list the figures given as actual cost of plant are not necessarily all inclusive. They, however, include boilers, engines, generating excitors, switchboard equipment, piping, wiring and accessory equipment. The comparison of most value is that of the figures found in the fourth column—the cost of plant per kilowatt of peak load.

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Company	Capacity	Cost to reproduce		Remarks
		per kw. plant	per kw. peak	
Newton G. & E.....	425 kw.	\$145.50	\$387.20	No overload capacity
Commonwealth				
Wtr. & Lt. Co.....	1,200 kw.	66.23	165.22	
Lakewood Wtr.,				
Lt. & Pr. Co.....	1,000 kw.	92.31	178.19	
Milburn Elec.	370 kw.	105.67	226.70	
Ocean Cy. Elec.....	1,090 kw.	108.52	147.83	
Vulcan Elec.	350 kw.	62.35	80.34	No spare unit
Clayton Elec.....	140 kw.	114.37	228.74	
Lambertville	270 kw.	109.69	224.36	
Averages of averages, excluding				
Newton	631 kw.	92.73	178.05	
Actual averages except Newton				
(Valuation G-62)		62.35	113.70	

From a consideration of the above, it appears that a fair value now for a comparative plant, erected a number of years ago, with the average amount of foresight, would be:

Per kw. of plant	\$105.00	
Per kw. of peak		\$200.00 (See valuation G-64.)
Present value per kw. of peak load is approximately		\$150.00

Based on this average a fair present value for a steam driven electric plant capable of performing duty equivalent to that performed by the Newton plant would be approximately \$24,000. As the peak load on the Newton plant, by calculation, is found to approximate 160 kilowatts, the probable cost new of such a steam plant would not exceed the cost of the plants in Lambertville, Clayton or Milburn, the cost of which has averaged approximately \$226 per kilowatt of peak load. This would indicate that a fair original

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cost for an equivalent steam plant for Newton would be approximately \$36,000.

Analysis of the relations between peak load and capacity of plant, taking the same fourteen plants listed above, shows an average rated capacity with relation to the peak load upon the same of 190%, or a 90% overload capacity.

The Newton plant is found to have a rated capacity equivalent to 265% of the peak load. The rated capacity amounts to 425 kilowatts, and the peak load as calculated from current readings taken from switchboard records, amounts to only 160 kilowatts. It is true that the aggregate kilovolt ampere load appears to be higher, but this is due to a poorly balanced load, all of the ordinary lighting being carried on one phase while the two street lighting circuits are supplied by the other two phases respectively. Owing to the characteristics of the engines in the Newton plant, there is no overload capacity, and the cost per kilowatt of actual peak capacity therefore becomes exaggerated for this reason.

The above statements would be correct with reference to any producer gas plant, but the conditions at Newton are aggravated still further because of the use of the bituminous producers, which are notoriously subject to wide variations with reference to the quality of gas.

It was testified by Mr. Ophulz (p. 89, Test. May 14th, 1915) that: "Any change in the value of the gas beyond a certain point causes the engine to stop operation entirely."

"Q. And that is the only thing that does make it stop, that is, when the heat value drops, that necessarily stops the engine, and when the value goes up the engine runs fast?

"Witness. Not necessarily.

"Q. It all depends upon the calorific value whether the engine runs properly or not?

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"Witness. It depends upon the regularity of the calorific value, a producer of the type you have, the gas changes in calorific value considerably.

"Q. How much?

"Witness. I should judge, say, from 90 to 135.

* * * * *

"Q. I asked you whether a change in the calorific value necessarily retards the speed of the engine.

"W. It always does.

"Q. It always does?

"W. If the load is constant, it always changes the speed of the engine.

* * *

"Q. No matter, how great a change would be necessary in the calorific value?

"W. A change, if it is too great, will stop the engine and if the calorific value gets too great it may stop the engine."

In answer to another question, Mr. Ophulz stated: (p. 81)

"The fact is, that up to the present time, there does not exist a bituminous producer which absolutely fulfills the requirements of proper engine, gas engine, practice."

Testimony in this case, and in the case which resulted in an order April 21st, 1914, requiring the Newton Company to make certain improvements, indicates that the investment in electrical plant in Newton has not been wisely made.

Earlier in this report, it has been stated that the Board is not convinced that increase in rates will always result in increased revenues. The Board's records show for the year 1913, the following:

Newton, with a population of 4,600, had only 252 electric light consumers in 1913, or 55.6 per thousand population.

Hackettstown, with a population of 2,800, had 385 electric light consumers, of 142.8 per thousand population.

Washington, with a population of about 3,500, had 295 consumers, or 83.3 per thousand population.

Boonton, with a population of about 4,800, had 589 consumers, or 125 per thousand population.

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A simple average of the same four places referred to above shows an average of 68.3 customers per thousand population, while Newton has only 55.6.

Averages of this kind are not conclusive, as the number of customers per unit of population will be affected very largely by the character of the population; by the presence of an active gas company in the same territory; by the character of service, and by the rates charged.

It appears, however, that the solution of the problem confronting the Newton Gas & Electric Company is a higher development. This usually can be obtained by moderate rates rather than by high rates. Good service is, of course, a prerequisite to such higher development.

The company must be allowed to earn normal operating expenses and a fair return upon a reasonable investment. The value accepted as the cost to reproduce new the electrical property, including materials and supplies, is \$100,668
The accrued depreciation is estimated at . . . \$25,625
Leaving a present value of physical property . . . \$75,043

In addition to the above, there is certain property non-operative, which the Board will not take into consideration in any analysis of the rates for service. The non-operative property should have been disposed of as soon as a market could have been obtained for the same.

To the value found above, there must be added some allowance for organization and the cost of obtaining franchises, for working capital, and for cost of establishing the business. Proof as to these matters is lacking. In the opinion of the Board, a liberal allowance for these elements would not exceed \$25,000. The Board will assume as the value of the operating electrical property in Newton, for the purposes of this case, the amount of \$100,000. The annual depreciation for the electric property is estimated at \$3,597.

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The rates charged for gas are not under consideration at this time, but in order to make a comparison between total value of property and outstanding capitalization, a statement concerning the value of gas property is essential. The cost to reproduce new the physical property devoted to gas operations is estimated at \$92,441
 The accrued depreciation is estimated at 20,574
 Leaving a present value of 71,867

In addition to the above, there is some non-operative property, which should be disposed of as soon as a market for the same can be obtained, and the money now invested in non-operative property credited to Capital Account.

In addition there are the charges for organization and the cost of obtaining franchises, and allowances for the cost of developing the business. The Board adopts as the base for this purpose upon which gas rates would ordinarily be predicated the sum of \$92,441.

The total value of property standing for the existing capitalization may, therefore, for the purposes of this case be assumed to be as follows:

Operative electrical property	\$100,668
Non-operative " "	8,697
Operative gas property	92,441
Non-operative gas "	1,181
Total value physical property (new)	202,987
Organization and cost obtaining franchises.....	10,000
Cost new	\$212,987
Against the above there is accrued depreciation amounting to....	50,758
Leaving a total Present Value of the entire property of the company of	\$162,229

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The capitalization of the company at the present time consists of:

	Bonds	\$146,000
	Stock	114,650
		<hr/>
Total Capitalization		\$260,650

For the purposes of proper comparison, the amount of Receiver's certificates originally issued should also be included. This was \$29,500, making a total of \$290,150.

Analysis of the statements submitted by the company (Exs. P-6 and P-7) indicates, as stated earlier in the report, that the over-capitalization of the company commenced as early as the time of the consolidation in 1901, and it is clear that the company's statement that no dividends have ever been paid on the stock has no bearing upon the question as to whether or not the operations of the company have been profitable.

Table G, following, shows the total net earnings for the years 1911, 1912 and 1913.

TABLE "G."

ELECTRIC DEPT.	1911	1912	1913	TOTAL
Operating income	\$6,755.93	\$3,493.78	\$8,139.37	\$18,389.08
(exclusive of depreciation)				
Depreciation (3.86%)	2,509.00	3,551.20	3,667.00	9,727.20
Net operating income	4,246.93	*57.42	4,472.37	8,661.88
GAS DEPT.				
Operating income	3,971.39	2,637.22	1,359.68	7,968.29
(exclusive of depreciation)				
Depreciation (2.05%)	1,503.22	1,812.10	1,918.08	5,233.40
Net operating income	2,468.17	825.12	*558.40	2,734.89
Total Net Earnings	6,715.10	767.70	3,913.97	11,396.77

It should be noted that in making the above statement, depreciation has been included in connection with both the

*Loss.

Rates—Newton Gas and Electric Co.

gas and electric departments. It should be noted further that the total net earnings for the three years available for distribution as profits amount to \$11,396.77, an average of \$3,798.92 per year. This would represent a profit of 6% on an investment of \$63,315, which as appears is less than the total investment in the gas and electric departments.

This insufficiency of return does not indicate, under the circumstances here, that the existing rates are unjustly and unreasonably low, but rather that there is a want of a reasonable degree of development even under the existing rates, which can be accounted for by the long continued inefficient operation and service.

PRESENT RATES.

The rates charged for energy for electric lighting at the present time are as follows:

Up to 30 kw. hrs.	15¢ per kw. hr.
30 to 60 kw. hrs.	13¢ per kw. hr.
60 to 100 kw. hrs.	11¢ per kw. hr.
100 to 200 kw. hrs.	9¢ per kw. hr.
200 and over	8¢ per kw. hr.

Bills paid promptly are subject to a discount of 5%. Minimum charge, \$1 per month.

Rates for electric energy for electric power are as follows:

10¢ per kw. hr. with discounts as follows:

Gross bills from \$1	to	\$5, 15%
" " "	\$5	to \$10, 25%
" " "	\$10	to \$20, 33%
" " "	\$20	to \$30, 40%
" " "	\$30	to \$40, 45%
" " "	\$40	to \$50, 50%

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PROPOSED RATES.

The new rates proposed by the company are as follows:
20c per kw. hr. for the first 30 hours' use per month of
the attached load.

The second 30 hours' use per month of the attached load
to be charged for as follows:

Under 30 kw. hrs.	16¢
30 to 50 kw. hrs.	15¢
50 to 100 kw. hrs.	14¢
100 to 150 kw. hrs.	13¢
150 to 200 kw. hrs.	12¢
200 or more	10¢

All use in excess of 60 hours' use of the maximum demand, 9¢.

The minimum charge under the proposed new schedule
corresponds to the charge for the first 30 hours use per
month of the attached load at the rate of 20c. per kw. hr.

The assumed consumption in 30 hours of the attached
load is to be computed in accordance with the following
table:

TABLE "H." .

<i>No. of sockets</i>	<i>Kw. hrs. per month chgd. as one hr's avg. daily use</i>	<i>No. of sockets</i>	<i>Kw. hrs. per month chgd. as one hr's avg. daily use</i>
1	3	51	56
2	4	52	57
3	5	53	58
4	6	54	59
5	7	55	60
6	8	56	61
7	9	57	62
8	10	58	63
9	11	59	64
10	12	60	65
11	14	61	66
12	15	62	67
13	16	63	68

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<i>No. of sockets</i>	<i>Kw. hrs. per month chgd. as one hr's avg. daily use</i>	<i>No. of sockets</i>	<i>Kw. hrs. per month chgd. as one hr's avg. daily use</i>
14	17	64	69
15	18	65	70
16	19	66	71
17	20	67	72
18	21	68	73
19	22	69	74
20	24	70	75
21	25	71	75
22	26	72	76
23	27	73	76
24	28	74	77
25	29	75	77
26	30	76	78
27	31	77	78
28	32	78	79
29	33	79	79
30	34	80	80
31	35	81	80
32	36	82	81
33	37	83	81
34	38	84	82
35	40	85	82
36	41	86	83
37	42	87	83
38	43	88	84
39	44	89	84
40	45	90	85
41	46	91	85
42	47	92	86
43	48	93	86
44	49	94	87
45	50	95	87
46	51	96	88
47	52	97	88
48	53	98	89
49	54	99	89
50	55	100	90

Each additional 1—.9.

Each socket is considered as 50 watts capacity.

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The minimum charge in any month is \$1.00 net.

The minimum charge, in accordance with the proposed new schedule, would vary with the connected load.

The ordinary small house may be considered as having 20 lights. The minimum charge for 20 lights, as found from the table, is made up as follows:

Opposite the number of sockets given as 20 is the figure 24; 24 kw. hrs. at 20c. = \$4.80.

The minimum monthly charge for 20 sockets would, therefore, be \$4.80. (Exhibit P-13).

Under the present schedule, it will be noted that the minimum monthly charge is \$1.00 without reference to the number of sockets.

The position of the Board with respect to minimum charges for electric lighting and power is defined in memorandums adopted January 16th, 1912. In the memorandum on the minimum charge for electric lighting the Board said:

"If a public utility corporation should refuse to supply every customer whose business appeared to be unprofitable, the total number of customers now supplied would be very much reduced.

"As it is, therefore, the duty of a public utility to supply all customers, we are led to inquire into the object of making a minimum charge, and are answered in various ways: (1) It is an attempt on the part of the company to prevent the mere curiosity seeker, who has no real need for service from imposing on the company a burden involving expense for which it would receive no adequate compensation, unless a minimum charge was made; (2) It is an attempt to obtain from each customer an amount approximating the average cost to the company for such service as it must render whether any electric current is used or not.

"A charge in connection with the first is a matter of policy, which must be considered very carefully by the company, and should only be sufficient to accomplish the purpose indicated, and therefore should not be based on any other considerations.

"Electric lighting service is a necessity, and the utilities engaged in supplying it are in duty bound to furnish it to all who apply for it, and may not refuse to do so, providing a customer agrees to live up to such reasonable rules and regulations as are actually necessary to safeguard

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the rights and interests of the utility, which in turn tends to benefit the customers as a whole. It follows that the restrictions must not be burdensome, nor result in preventing any large body of persons from obtaining a service to which they have a right.

"One must not lose sight of the fact, however, that the supply of electricity, gas or water is a commercial project, and in the last analysis no individual customer has a right to service without giving in exchange adequate compensation.

"The second answer that the exaction of a minimum charge is an attempt to collect from each customer a figure approximating the average cost to the company of the service supplied should be analyzed. While the service supplied to some customers undoubtedly provides a wider margin of profit than that supplied to others, most of the rates charged by public utilities are in a sense based on a system of averages."

Investigations made by commissions of other states, all of which is brought out in detail in the memorandum referred to above, have resulted in the approval of a scheme of minimum charges, not, however, based on the cost as reflected by the varying demand of different customers, but so designed as to prevent the curiosity seeker from inflicting a burden upon the company, and sufficient in amount to compensate the company for the costs of maintaining and reading meters, bookkeeping, collecting, and the general costs which are more or less proportionate to the number of customers.

The conclusions of the Board in the memorandum on minimum charge for electric lighting referred to above, were that a charge of one dollar per month per plant or installation is just and reasonable for electric lighting, but that a charge of one dollar per meter is excessive. Where more than one meter is installed, a minimum charge of 50c. per month per meter is not excessive or unreasonable for each additional meter installed on the same premises for the same customer supplied through the same service.

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The general conclusions of the Board laid down in the memorandum dated January 16th, 1912, are herein referred to as being applicable to the present situation.

During the past two years, two large companies in this state have given up minimum charges for electric lighting which varied with the size of the installation, and in place of such schedule, have adopted a flat minimum charge of one dollar per month.

The Board decides that the proposed schedule of minimum charges for lighting is unjust and unreasonable.

With reference to the form of schedule proposed by the company, it should be said that this form resembles somewhat the schedule which was in use by the Rockland Electric Company at the time the Newton Company first proposed an increase in rates. Great stress was laid upon the justice of this schedule because of the fact that the Board had approved its introduction by the Rockland Electric Company into territory where another schedule had been in effect.

In the application of this schedule, the Rockland Electric Company met with practical difficulties, due to the inability of many customers to understand it, and since the schedule was filed by the Newton Company, the Rockland Company has discarded the schedule referred to. Aside from the question of the reasonableness of the rates proposed, the schedule submitted by the Receiver of the Newton Company is not in form to meet the Board's approval. A schedule under which the first hours' use is charged for at a higher rate than succeeding hours' use of the connected load conforms more nearly to cost than the simpler forms of rates in use by many companies. The portion of the proposed schedule referring to the second 30 hours' use is, however, unjustly discriminatory, in that its strict application will sometimes result in payment of

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a larger amount of money for a smaller amount of service.

The Town of Newton is not what would be called a "seasonal" resort, such as the communities along the seashore. The population does not vary greatly from season to season, and in no town of this character in New Jersey is there a rate in effect as high as 20c. per kw. hr. In fact, in all towns of any importance in the state, outside of seashore resorts, the maximum rate does not exceed 15c. per kw. hr.

In view of all the circumstances, the Board hereby determines that the company has not borne the burden of proof to show that the increase in the rates proposed is just and reasonable, and declares said proposed schedule unjust and unreasonable.

The proposed increase in rates; the continued inefficiency of the service shown by testimony in this proceeding, and in the proceeding involving complaints as to service, and the constant friction between the people of the municipality and the receiver in consequence of such continued inefficient service, raise a problem of grave import to the people of Newton and to those who are financially interested in the company.

The people are entitled to a safe, adequate and proper service at just and reasonable rates. The company is entitled for the rendition of such service to a fair return upon the reasonable value of the property devoted by it to the public use.

Long continued and patient effort by the Board and its engineers to secure for the community the character of service to which it is entitled, has resulted in some improvement, but the service rendered falls far short of a safe, adequate and proper service.

The Receiver contends that without the increase in rates proposed, which increase is now disapproved by the Board,

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further improvement in the service furnished by him is impossible.

It seems impossible, therefore, to secure for the community the service to which it is entitled at just and reasonable rates as long as the operation of the property continues with the Receiver.

In this situation, in view of the duty of the utility as to service, the financial interests of those holding the securities of the company must give way to the rights of the community.

In the judgment of the Board the problem admits of but one solution, and that is the sale of the property in the chancery proceeding.

Through such sale, a purchaser may, perhaps, be found who, paying a reasonable price for the plant, and investing the added money required for its readjustment, will be able to furnish the community a satisfactory service at a reasonable rate.

Dated November 26th, 1915.

No. 308.

ALBERT J. GLENUM

VS.

PUBLIC SERVICE GAS COMPANY

The petition in this proceeding is for an extension of service. The Board finds the extension to be reasonable and practicable and that it will furnish sufficient business to justify the construction and maintenance of the same.

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ORDER.

A. R. Glenum, for petitioner.

L. D. H. Gilmour, for Public Service Gas Company.

Albert J. Glenum complained that Public Service Gas Company refused to supply him with gas at his residence in Barrington, New Jersey. The company filed its answer alleging that such extension would not afford sufficient business to justify the expenditure required. Hearing was held on the complaint and answer.

After such hearing the Board finds and determines that the Public Service Gas Company may reasonably be required to supply safe, adequate and proper service to said complainant, and that to that end the said company may reasonably be required to establish, construct, maintain and operate the requisite extension of its existing facilities. In the judgment of the Board such extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same, and the financial condition of the said Public Service Gas Company reasonably warrants the original expenditure required in making and operating such extension.

The Board HEREBY ORDERS AND DIRECTS the Public Service Gas Company, upon the said Albert J. Glenum entering into a written contract to afford the said company, from the sale of gas to complainant's premises, business to the extent of twenty-four dollars per annum, and upon the production by complainant to the company of a plan or statement by the proper municipal authorities indicating the official established grade of Barrington Avenue, to establish, construct, maintain and operate such extension of its existing facilities as is necessary in order that the premises of the complainant, Albert J. Glenum, located on the

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westerly side of Barrington Avenue, south of Clement Bridge Road, Barrington, New Jersey, may be supplied with gas, and .

FURTHER ORDERS AND DIRECTS the said Public Service Gas Company upon the completion of such extension to supply the said Albert J. Glenum, at his residence aforesaid, with gas at the same rate and under the same conditions that other consumers of gas residing at premises in Barrington are supplied.

This order to be effective December 29th, 1915.

Dated December 6th, 1915.

No. 309.

MRS. E. E. WHITNEY

VS.

YANTACAW WATER COMPANY

The Board finds that the complainant's house is not supplied with a sufficient pressure of water, and that proper and adequate service is not rendered said complainant.

E. E. Whitney, for the complainant.

A. J. Van Brunt, for the company.

Two complaints were made by Mrs. Whitney concerning the insufficiency of the supply of water to houses owned by her in Delawanna, New Jersey. The respondent has a plant in that municipality and water is supplied by it to the houses of complainant. The first complaint, made in the

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early part of September, referred more particularly to houses owned by the complainant on Williams Street, Delawanna. It appears that there are three houses owned by complainant on that street, all of which are connected with the main in the street by a single one-half inch service pipe. This, in our judgment, is not a sufficiently large service pipe to supply this number of houses. It is not unlikely that some of the trouble experienced in these houses is due to the insufficient size of the service pipe. We recommend that the complainant replace the half inch service pipe with one not less than an inch in size.

We do not think, however, that the size of the service pipe supplying the Delawanna Avenue house of the complainant is responsible for the poor pressure of water in that house. The testimony on behalf of the complainant was that it was impossible to get any water on the second floor of this two story house for hours at a time. The cause of this lack of supply is attributed by complainant to the inadequacy of the respondent's plant to serve the number of customers which it has. We think that the complaint in so far as it affects the Delawanna Avenue house is well founded. An Inspector of the Board testified that if the respondent kept the reservoir tank, from which the water is distributed through the mains, filled to its capacity the pressure at the service pipes would be thirty pounds, and that a pressure of twenty-five pounds would be sufficient to satisfactorily supply the number of customers in this municipality. His opinion was that sufficient pressure was not maintained and that this was the cause of the failure of the water supply on the second floor of complainant's house.

The Board finds, therefore, that the complainant's house on Delawanna Avenue is not supplied with a sufficient pressure of water; that, therefore, the service rendered by the respondent to the complainant at said house is not adequate

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nor proper. It will issue an order directing the respondent to furnish adequate and proper service to the Delawanna Avenue house of complainant.

Dated December 7th, 1915.

ORDER.

This matter being at issue, upon complaint and answer on file, and the Board having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, which by reference thereto herein is made part hereof, the Board,

HEREBY ORDERS the Yantacaw Water Company to supply water to the house of Mrs. E. E. Whitney on Delawanna Avenue, under such pressure that there will always be an adequate supply at the fixtures on the second floor of said house.

This order shall become effective December 29th, 1915.

Dated December 7th, 1915.

No. 310.

EDWIN BETTS

VS.

MORRIS AQUEDUCT COMPANY.

It is admitted that the water pressure in Morris Plains is not great enough to furnish reasonable protection in case of fire without the use of a fire engine. It appears that when the water company laid the main from Littleton to the Morristown Reservoir for the purpose of supplying Morristown, it notified the persons in Morris Plains who applied to it for service, that the main in question was intended for an additional

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supply to the City of Morristown and that the pressure in Morris Plains would not be sufficient for fire purposes. The supply to Morristown appears to be of satisfactory pressure, and it would seem that the cost of additions to plant and equipment made necessary by the demands of Morris Plains should be met largely, if not wholly, by the consumers of that section. In view of the apparent unwillingness of the residents of Morris Plains to pay an amount which might be considered a fair return upon the investment made by the respondent for the benefit of that section, and concluding that the furnishing of the additions to the plant and equipment required, in order to supply the kind of service demanded by the people of Morris Plains, would result in an unreasonably low return, if not in loss to respondent, the complaint is dismissed.

Edwin Betts, appeared in person.

J. O. H. Pitney, for the respondent.

The complaint in this matter is that there is an insufficient water supply on the second floor of complainant's house due to lack of pressure. The complainant's house is located on higher ground than the other houses in Morris Plains, which are supplied by the respondent company. The complaint also alleges insufficient pressure at the fire hydrants to afford reasonable fire protection. Upon consent of the attorney for the respondent the complaint was considered as involving insufficient service for fire purposes in Morris Plains as well as the alleged insufficiency of pressure in Doctor Betts' house.

Morris Plains is a settlement about two miles north of Morristown. It lies partly in Hanover Township and partly in Morris Township. The population is about 1,200; the consumers of water served by the respondent number nearly 200. It appears that a fire occurred in this place last Spring and it was impossible to obtain water in sufficient force to throw a stream to the roof of the burning building, which was two stories in height. A fire engine was brought from Morristown and when this was connected

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with the street water main sufficient pressure was obtained to throw a stream to the roof of the building. The result of the futile efforts of the local fire department in Morris Plains to combat the fire, with the mere static pressure of the water in the mains, was that a petition was presented by thirty or forty of the residents of Morris Plains to the Water Company asking that more pressure be furnished for all ordinary purposes and also for fire protection.

So far as Doctor Betts' case is concerned, it appears that the water at the ground floor of his house has an eighteen foot static head, which is equivalent to a pressure of about nine pounds. With a rise of eighteen feet from the ground floor of his house it can be seen that the force of the flow is almost spent when it reaches the second floor fixtures, which are located about thirteen or fourteen feet above the level of the ground floor. When the water is running on the lower floor of his house there is no flow from the fixtures on the second floor. We are satisfied, however, that if there is no interference with the water by use of it on the first floor, while the fixtures on the second floor are open, a supply of water on that floor can be obtained, although the flow will not be of satisfactory force. The other houses supplied by the respondent are located on lower ground than Dr. Betts' and are supplied under a static head of from thirty to thirty-five feet. There was only one other building concerning which it was suggested that the water pressure may be insufficient, namely, the Hanover School House, but no one connected with the school or the municipal administration offered any testimony with reference to the water service at the school, and the testimony that was offered to the effect that pressure was insufficient is not of such positiveness as to be convincing.

It is undeniable that the water pressure in Morris Plains is not great enough to furnish reasonable protection in case

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of fire without the use of a fire engine. Indeed, the company practically admits this to be so.

The respondent company was organized for the purpose of serving Morristown with water. The sources of its supply are various springs located among the hills for five or six miles around that city. In 1904, in order to increase the supply of water to Morristown, the demands of which city were requiring more water, the respondent drove wells at Littleton, about a mile and a half north of Morris Plains, and laid a twelve-inch main from these wells to the Morristown Reservoir. The water from these wells was pumped into the reservoir at Morristown whenever by reason of droughts or unusual demands upon its supply the water in the reservoir ran low. At the time of the laying of a main from Littleton, Morris Plains was a small hamlet of thirty or forty houses, sparsely located. Since that time the population has grown to two hundred or more houses. The first service to houses in Morris Plains were to those located on the street along which the twelve-inch main to the Morristown Reservoir ran. With the growth of Morris Plains, it became necessary to make extensions. It appears that when the pumps at Littleton are working and driving the water from the wells through the main to the Morristown Reservoir, the inhabitants of Morris Plains get a high pressure of water. When the pumps are stopped, they get only the pressure occasioned by the gravity flow from the Morristown Reservoir, which in the greater part of Morris Plains runs fourteen to sixteen pounds. There are several fire hydrants which appear to have been put in at the request of residents and the rents of which for years were paid for by residents. Latterly it seems that these rents were assumed by one of the municipalities.

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There are several cases in our courts which speak of the duty of a water company which undertakes to supply water to a community.

In the case of *Olmstead vs. Morris Aqueduct*, 46 N. J. L., Mr. Justice Parker, speaking for the Supreme Court, at p. 501, said:

"It is well known that when a company undertakes to supply a town with water, the ordinary methods to obtain water to extinguish fires are abandoned by the people, and under such circumstances it would be gross negligence in the company to permit the supply of water to be intermitted or diminished to any considerable extent, and thus endanger the property within the town."

This case was affirmed in the Court of Errors and Appeals, 47 N. J. L., 311.

In the case of *Long Branch Commission vs. Tintern Manor Water Co.*, 70 N. J. Eq., p. 71, Vice-Chancellor Pitney, said at p. 77:

"A company which seeks and obtains a franchise to supply a certain territory with water for public and domestic uses is under a moral, and, in my judgment, a legal, obligation to furnish *a supply which shall be equal to all emergencies which may be reasonably anticipated, including unusual droughts and unusual conflagrations*, and to bear constantly in mind the prospective increase in population and a consequent increased demand for water."

And at p. 98:

"In the first place, the water company comes under a serious obligation, somewhat like that of an insurance company, to keep itself in a continuous, uninterrupted and unfailing readiness to *furnish at each fire hydrant a sufficient supply of water under a reasonable and adequate continuing pressure.*"

This case was affirmed in the Court of Errors and Appeals for the reasons stated in the opinion of Vice-Chancellor Pitney, at 71 N. J. L., 790.

These cases would seem to point out the duty of a water company towards a municipality which it serves. We do

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not think that in the present case it makes any difference in that duty because the community served lies partly in one municipality and partly in another, nor do we think that the duty of the water company is in any wise affected if it should appear that it is not operating in the locality in question by virtue of a franchise. Its undertaking to serve the community and the actual location of its mains and connection of two hundred houses therewith make its duty towards this community, in the respect mentioned, imperative without a franchise.

Concluding that it is the duty of a water company to furnish water available for all reasonable demands for fire purposes, the next question to be considered is upon what terms is such company required to furnish a supply of the character stated. It appears that when this company laid the main from Littleton to the Morristown Reservoir for the purpose of supplying Morristown as above stated, it notified the persons in Morris Plains who applied to it for service that the main in question was intended for an additional supply to the City of Morristown and that the pressure in Morris Plains would not be sufficient for fire purposes. And, according to the testimony of the General Manager and Engineer of the respondent, it has time and again served such notice upon the people of Morris Plains. It is also patent that if Morris Plains were provided with a fire engine of sufficient capacity, water could be pumped from the present mains in sufficient quantity to furnish ordinary protection against fire. And it is doubtful upon the testimony if the company is receiving a fair return upon the property devoted to the service of Morris Plains.

Statements as to the value of the property used in the present system for service in Morris Plains and the income therefrom, as to the cost by a plan under which additional high pressure service for both fire and domestic pur-

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poses may be obtained; the cost by a plan under which necessary high pressure for fire service only may be obtained, and also a plan under which the present pressure may be steadied only, were presented by the respondent and are annexed hereto.

Without passing upon the correctness of the figures or the propriety of the plans for the service of a community of the size of Morris Plains, it is evident to the Board that, if necessary high pressure for fire purposes is to be obtained, additions to the plant and equipment of the respondent are required. Without committing itself to either plan, it would seem to the Board that of the three plans mentioned in said statement either the first or second would be the more practicable, because the mere obtaining of steadiness of pressure, which is all that is provided for by the third plan, would not give any higher pressure for fire purposes than may be had at present.

While the Board is willing to order the respondent to furnish additional pressure for fire protection in Morris Plains, it does not feel that it should do so in view of the statement of one of the witnesses for the complainant that the people of Morris Plains would not pay any higher charge for service in case of increase in the pressure than they are at present paying. The additional cost required for high pressure in Morris Plains will be, under any aspect of the case, considerable and as the supply to Morristown appears to be of satisfactory pressure, it would seem that the cost of additions to the plant and equipment of the respondent made necessary by the demands of Morris Plains should be met largely, if not wholly, by the consumers of that section. In view of the apparent unwillingness of the residents of Morris Plains to pay an amount which might be considered a fair return upon the investment made by the respondent for the benefit of that section, and concluding

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that the furnishing of the additions to the plant and equipment required, in order to supply the kind of service demanded by the people of Morris Plains, would result in an unreasonably low return, if not in loss, to the respondent, the Board will dismiss the complaint.

We might add, however, that we shall again take up this matter for consideration at any time that the municipalities in which Morris Plains is located, or the customers of respondent therein, apply to the Board and express a willingness to accept an increase in water charges based upon any fair plan for furnishing the additional service desired by that locality.

Dated December 7th, 1915.

ORDER.

This case having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof,

IT IS ORDERED that the complaint in this proceeding be,
and it is hereby, DISMISSED.

Dated December 7th, 1915.

Samuel M. Gillmore vs. Hackensack Water Co.

No. 311.

IN THE MATTER OF HEARING ON INSPECTOR'S REPORT—INFORMAL COMPLAINT OF SAMUEL M. GILLMORE VS. HACKENSACK WATER COMPANY.

The term "service connection" does not refer to extensions or mains, but is limited to installation of service from a public street or road to property abutting thereon. The Board concludes that the Hackensack Water Company should take upon itself the burden of maintaining all such connections as lie within the public streets up to and including the stop cock. The practice of the company requiring the consumer to pay for the installation of service pipe within the public streets and the stop cock is disapproved as an improper and unreasonable charge.

H. L. DeForest, for Hackensack Water Company.

Mr. Gillmore filed an informal complaint with this Board stating that he had been required to pay the cost of restoring or replacing a water service connection through which he is receiving service from the Hackensack Water Company. The leak which caused the trouble was in the lead service pipe leading from the water company's main in James Street to the residence of Mr. Gillmore. This lead pipe had been paid for in the year 1894 by E. D. K. Patterson, a former owner of the property served. In July, 1907, the premises were purchased by Mrs. S. M. Gillmore and about the same time the respondent, in pursuance of its generally established practice, required the new owner to sign a printed form called "Application of Consumer," in which is incorporated the following:

"As a further consideration and inducement to said water company to supply me with water I hereby agree for myself, my heirs, representatives and assigns, to sell to the said water company at any time, my right, title and interest in the pipe I may lay from the mains of said company to the point where said pipe enters my private property at a fair market value of the pipe, at the time the company decides to take it off my hands, and the actual cost for excavation and refilling, which

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would be necessary if the company had to lay the pipes themselves. I will also sell and convey to them, without additional compensation, any right of way I may now or hereafter possess, enabling me to lay and maintain said pipe and keep it in repair, and will keep it in repair until said company purchase it."

After investigation based upon admitted facts, the Inspector found that the leak in the service pipe to Mr. Gillmore's residence occurred at a point within the public street.

This Board in the complaint of *J. L. Lane vs. Tuckerton Water Company*, (reported June 15th, 1915), said:

"It is the duty of a water company, or other utility supplying service to buildings, to furnish and maintain such service, at all events, to and at the curb line, and in order to do so it must maintain the service pipe or conduits in such condition that an adequate flow or supply may be furnished."

Following the rule therein laid down, the Hackensack Water Company should take upon itself the burden of maintaining all such connections as lie within the public streets.

The water company asserts that it owns none of the service connections of its system, ~~that the same have all been~~ paid for by the consumers, and that it is under no obligation to provide for the repair or maintenance of them. The exact position taken by the company on this complaint is that the lead pipe was paid for by Mr. Gillmore's predecessor in title and that the service is covered by the "Application of Consumer" signed by Mrs. Gillmore and dated July 12th, 1907.

This form of contract compelling an applicant for service to sign same was considered in the rules and practice laid down by the California Railroad Commission for water, gas, electric and telephone utilities (see Public Utility Re-

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ports, Cal., 1915-E, No. 3, page 741). The object of such contract is to hold the consumer "for a term beyond that for which he would desire to be held if he were a free agent—a motive to which this commission cannot give its sanction."

There has been much discussion of the charges made by utilities for so-called "service connection." The term "service connection" as here used does not refer to extensions or mains, but is limited to installation of service from a public street or road to property abutting thereon. The matter was carefully considered in the case of *Glendale vs. Title, Guarantee & Trust Co.*, 2 Cal. R. C. R. page 989, in which the Commission said:

"That it is the duty of a water company to supply service connections up to the property line, and meters, where meters are used, without direct expense to the consumer, seems clear both on principal and on authority. Such requirement seems entirely reasonable. The service pipe up to the property line and the meters, where used, are as necessary in the performance of the water company's duty to the public as its reservoirs, wells, or mains. The consumer has no right to dig up the streets to lay a service pipe. That right belongs to the water company alone. It seems unreasonable to ask that the consumer should pay for service pipes and meters which are a part of the water company's system, which the consumer has no legal right to install and which are under the complete control of the water company."

The Wisconsin Railroad Commission has reached the same conclusion. In *Janesville vs. Janesville Water Co.*, 7 Wis. R. C. R. 628, the Wisconsin Commission at page 681, says:

"The question as to who should own meters appears to be settled. The only point to be decided here is whether or not services are a part of the facilities which the utility is expected to furnish. The logical conclusion seems to be that the utility should install and own services to the curb line. The utility, and not the consumer, has the right to occupy the streets, and all pipes laid in the streets should be the property of the utility, and we believe should be put in by the utility. The business of

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the utility is to deliver its product to the premises of the consumer. If the utility should own the mains through which water is carried to various sections of the city, it seems equally true that it should own all parts of the distribution system as far as the consumer's premises. The service pipe from main to curb is as much a part of the utility's distribution system as is the main itself. Both parts of the equipment have the same purpose—the delivery of water to the consumer's premises."

The Board concludes that the Hackensack Water Company should take upon itself the burden of maintaining all such connections as lie within the public streets up to and including the stop cock.

The practice of the company, requiring the consumer to pay for the installation of service pipe within the public streets and the stop cock is disapproved as an improper and unreasonable charge.

Dated December 7th, 1915.

No. 312.

IN THE MATTER OF THE PROPOSED WITHDRAWAL FROM SALE OF SIX TICKETS FOR TWENTY-FIVE CENTS BY THE TRENTON AND MERCER COUNTY TRACTION CORPORATION, ON STREET RAILWAYS OPERATED BY IT.

The proposed withdrawal of tickets sold for many years at the rate of six tickets for twenty-five cents would result in requiring users of such tickets to pay a higher charge or rate for carriage on the cars of the respondent, and involves an increase in the charge or rate to be paid by them for such service, and further involves a change or alteration in the existing classification of rates and charges. The question before the Board is whether the proposed increase, change or alteration in charge rate or classification is just and reasonable.

The Board concludes that the value of the property for the purpose of fixing rates does not exceed \$3,212,000. Based upon this value the average net return for four years is 9.4 per cent.

The Board finds and determines that the increase, change or alteration which would result from the proposed withdrawal of the tickets is not just and reasonable and disapproves the same.

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George L. Record and *Charles E. Bird*, for the City of Trenton.

Edward M. Hunt and *Frank S. Katzenbach, Jr.*, for Trenton and Mercer County Traction Corporation.

Frank H. Sommer, for the Commission.

Under date of August 13th, 1915, the Board received a communication from Trenton and Mercer County Traction Corporation, by Rankin Johnson, President, which notified the Board that the company and its lessors had "for many years past" sold six tickets for twenty-five cents, that owing to decreased revenue and increased cost of operation the company intended to discontinue this practice and to withdraw the tickets from sale and would exact a five-cent fare for carrying each passenger over five years of age, and that under the charters and ordinances by virtue of which it operated its roads it was entitled to exact such fare.

In a later communication the company advised the Board that it intended to withdraw the sale of such tickets on August 20th, 1915.

The Trenton and Mercer County Traction Corporation operates as lessee the railways of the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton Hamilton and Ewing Traction Company. The tickets, withdrawal of which was proposed, have been and are sold as mentioned above, and each ticket has been and is accepted as the equivalent of a five-cent fare for transportation on all of the leased lines of said company.

On August 17th, 1915, the Board entered an order suspending the increase in the existing individual and special rate, and the change or alteration of the existing classification, as proposed by the company, and fixed a time for hear-

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ing. Hearings were held and the matter was finally submitted November 23d, 1915.

The company contended that the Board was without jurisdiction to inquire into the justice and reasonableness of the proposed change, because the ordinances passed by the City of Trenton, under which it operates, constituted inviolable contracts by which the rate of fare for each passenger over five years of age is fixed at five cents.

We have examined the acts of incorporation and ordinances upon which this claim is based. In our judgment, they do not support such claim, nor do they preclude us from the exercise of the jurisdiction conferred by the act creating this Board and defining its powers.

In the judgment of the Board the proposed withdrawal of tickets would result in requiring the users of such tickets to pay a higher charge or rate for carriage on the cars of respondent, and involves an increase in the charge or rate to be paid by them for such service, and further involves a change or alteration in the existing classification or rates and charges.

The question before us is, therefore, whether the proposed increase, change or alteration in charge, rate or classification is just and reasonable. To determine this question we turn to the proofs before us.

Incidentally, it is to be noted that the tickets in question have been sold by the company and its predecessors for upwards of twenty years.

VALUATION.

The books of the Trenton Street Railway Company, and its subsidiaries, produced, are incomplete, and do not disclose the actual cost of the property. The books do disclose some information as to the amounts of stock and bonds

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which were issued by the subsidiary companies. The amount of stocks and bonds so issued, however, bear no necessary relation to reasonable cost or value.

There is in evidence a valuation made by the Board's engineer in the spring of 1911, in connection with the lease of the properties to a new operating company. There is also a valuation made in a very general way by Mr. Rankin Johnson, based upon an investigation which he made in 1910.

In addition, there is a valuation made for the purpose of this case by engineers representing the city, Messrs. Rand & Brackenridge, and a fourth valuation made up practically as of the present time by Mr. Rankin Johnson for the company. There is also in testimony data concerning the expenditures upon this property since 1910. The proper classification of these expenditures as between construction and maintenance accounts is subject to some doubt and consequent criticism. An examination of the charges to these accounts has been made by the Board's examiners, assisted by one of its engineers, Mr. Ingham, who is familiar with street railway construction. The Brackenridge estimate made for the city discloses certain errors and omissions due to the use of low unit prices and to insufficient estimates of quantity. When corrected in these respects, it will be found that the Brackenridge estimate of value does not differ greatly from the value of the property as determined by us.

The Johnson valuation is subject to some criticism, also, as it is more or less based upon his estimate of 1910, with additions for the work done since that time.

In view of all the testimony with regard to valuation of this property, we are of opinion that the best estimate can be made up by taking the Betts report made in February, 1911, deducting from the inventory in that report the items

Withdrawal of Tickets—Trenton and Mercer Co. Traction Corp.

which have since disappeared, adjusting the values where the testimony in this case shows substantial error, and adding thereto the amounts found by the Board's examiners to be properly chargeable to road and equipment during the period from February 1911, to the present time.

The value placed upon this property by the Board's engineers in 1911, which valuation was made for the purpose of considering whether approval of the lease should be given was, omitting overhead charges \$2,387,950

This valuation includes materials and supplies on hand at the time, these items being properly classified as a part of working capital.

Deductions from the above because of items removed, are as follows:

No. 1 engine and two generators, 300 kw., @ \$120.....	\$36,000	
Two 125 h. p. h. r. t. boilers.....	2,500	
One battery booster	950	
Two storage batteries	20,000	
Excess value allowed for old machinery, 1900 kw., @ 30 per kw.	57,000	
No. 3 generating unit, nearly obsolete, 750 kw. @ \$30 (full value being \$60 per kw.).....	22,500	
Old horse car barns—		
Land	7,687	
Buildings	19,200	
Line from Yardville to Crosswicks, not now in the service of the public	25,300	
Land in Yardville	875	
Total deductions taken as.....		192,012
		<hr/> \$2,195,938

Spring Lake Park, owned by the company and partly rented for resort purposes, is valued by the company at \$35,000. An outstanding mortgage leaves an equity of \$15,000. The value allowed in the Betts report for this property was \$16,875. This amount should be deducted, because we conclude it is not property used or useful in

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transportation service. This reduces this figure to \$2,179,063.

ADDITIONS.

Before adding the cost of work done since 1911 some additions must be made for inadequate allowances in the Betts estimate of 1911. Value of land was obtained by taking the assessor's valuation and adding thereto 25 per cent. on the assumption that land was assessed at 80 per cent. of its true value. There does not appear to have been any great error in the valuation of the land occupied by the car barns, but the allowance of \$4,000 for power station land is clearly insufficient. This land is so situated as to accommodate a siding from the railroad. It is contiguous to the Assunpink creek from which an ample supply of water is obtained for condensing purposes. The value of \$6,000 placed on this land by the company is not regarded as excessive. An addition of \$2,000, therefore, will be made for power house land.

Private right of way for the Princeton line was estimated by Mr. Betts at approximately \$36,000, but for some reason he omitted a portion of it and allowed only \$14,000. We accept \$36,000 as value of this land. On account of Princeton right of way there will be an additional allowance made of \$22,000.

In the western part of Trenton, on the Trenton Junction line, there is a private right of way 2,700 feet in length. This appears to have been omitted entirely from the Betts appraisal. We allow for this land \$6,750. Total additions for land will, therefore, be \$30,750.

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TRACK AND ROADWAY.

After an examination of the testimony of the several witnesses as to unit prices, the estimate of Mr. Betts will be allowed to stand as the value new in 1911. The same may be said with regard to paving.

BRIDGES AND CULVERTS.

With regard to this item there appears to have been an omission of certain bridges. From the testimony in this proceeding it is clear that the cost of reproduction for all the bridges found in this system will approximate \$50,000. This agrees with the company's estimate (Ex. T. & M. No. 62). In the Betts estimate the amount allowed was \$14,800. There will, therefore, be added the amount of \$35,200.

OVERHEAD CONSTRUCTION.

In the Betts estimate of 1911 the total allowance for overhead construction, including overhead charges, was \$152,547. The estimate made by the city's representative places the value at the present time at approximately \$307,000, and that made by the company at \$320,000. Examination indicates that in the Betts estimate an insufficient amount was allowed for copper feeders running from the power plant to points on the various lines. Additional feeders have been installed since 1911, and some further changes were made in the distribution system when the storage batteries were discarded. There appears to have been also a lack of proper allowances for track bonds. On the whole, we accept the Brackenridge estimate of \$307,000, plus an allowance of \$5,000 for special overhead work at draw bridges, which appears to have been omitted from his estimate.

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Brackenridge estimate	\$307,000
Overhead specials	5,000
	<hr/>
	\$312,000
Deduct cost of additions since 1911, added hereafter in allowance for additions made since 1910	16,906
	<hr/>
Estimated value, 1911	\$295,094
Deduct estimate in Betts report of 1911, and already included..	152,547
	<hr/>
Amount to be added for fair value of overhead construction.....	\$142,547
Taken as	\$142,550

ROLLING STOCK AND EQUIPMENT..

With regard to this class of property, we are inclined to let the estimate stand as the cost to reproduce the equipment owned by the company in 1911. It should be noted that Mr. Betts included the first ten new cars, the value of which must be deducted from his estimate, as they are also included in the figure for additions, amounting to \$568,307. The cost of the ten cars referred to was \$50,370. This we deduct from Mr. Betts' figure of \$408,000, leaving an amount of \$357,630, as the value of the cars. Further comment will be made upon this item in connection with the accrued depreciation.

CAR HOUSES, REPAIR SHOPS, TOOLS, STOCK AND ADJACENT REAL ESTATE.

With the exception of the real estate which has been referred to above, we see no reason to make any adjustment in the amount allowed in the Betts' estimate.

POWER STATIONS.

Proper deductions and allowances for power station and its equipment as of 1911 have already been made above.

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ADDITIONS MADE SINCE 1910.

Exhibit C 1, b & c, submitted by the company, contain detailed lists of the items of work done by the company since 1910. All of the work found in these lists was charged either to road and equipment account or to rehabilitation, but the total finally is found in charges to capital account. If we are to obtain the value of actual additions to the property made since 1910, a reclassification is necessary. Using Exhibit C 1, b & c as a basis, the accountants of the Board made an examination of the books of the company and arrived at the conclusion that of the amounts found in Exhibit C 1 b, which totaled \$500,000, the correct amount chargeable to capital account is \$338,256. Of the amount found in Exhibit C 1 c, totaling \$321,916, it was found that approximately \$230,051 was properly chargeable to capital account, making a total addition to the value of the property up to September 30th, 1915, of \$568,307.

SUMMARY OF VALUATION.

Summarizing the above we have—

Value Betts' report, 1911	\$2,387,950
Deductions for discarded plant	192,012
	<hr/>
	\$2,195,938
Deduct for Spring Lake Park	16,875
	<hr/>
	\$2,179,063
Additions—	
Land	30,750
Bridges and culverts	35,200
Copper feeders and bonding	142,550
Addition since 1910	568,307
	<hr/>
Total value of physical property, new.....	\$2,955,870
Deduct for cars included twice	50,370
	<hr/>
Value as of September 30th, 1915	\$2,905,500

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ACCRUED DEPRECIATION.

The depreciation that had accrued to the property in existence, in 1911, was very considerable. Because of the failure to maintain the property, extensive rebuilding was necessary, both with regard to the tracks, the overhead construction and the cars. Additional machinery in the power plant and additional cars were required. Some of the depreciation which had accrued up to 1911 has been made good by expenditures upon the property in the last four years. These expenditures have been greater than normal, as the amount which was necessary to expend was considerably above the average which would have been necessary if the property had been well maintained prior to 1911. A deduction for accrued depreciation has already been made in connection with the No. 3 generating unit in the power station. Items of property not in existence, in 1911, have been eliminated from the above appraisal. Included above is the full allowance for all of the cars upon a basis of value new. There are one hundred single-truck cars which must either be replaced by new equipment or must undergo very considerable reconstruction, the cost of which in most cases would nearly equal that of new cars. These one hundred cars have an average cost value in excess of \$3,000 each, and therefore represent an original cost of perhaps \$300,000. The motor equipments are but slightly depreciated. The car bodies and trucks have depreciated fully 75 per cent., and the total depreciation on cars is fully \$100,000. There is an accrued depreciation in track and roadway and overhead system, not including copper wire, of not less than 10 per cent. This amounts to at least \$120,000.

We have no further deductions for accrued depreciation.

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Value as found above	\$2,905,500
Accrued depreciation	220,000
	<hr/>
Present value, September 30th, 1915	\$2,685,500

The deduction made for accrued depreciation is based upon actual depreciation ascertained upon inspection, and not upon theoretical depreciation.

INTANGIBLE ALLOWANCES.

Except as hereinafter mentioned, all proper allowances for intangibles have been heretofore included.

OVERHEAD CHARGES.

For overhead charges we consider the allowance of 15 per cent. sufficient to cover engineering, errors and omissions, contingencies and interest during construction, considering the piecemeal manner in which a number of these roads and extensions were constructed. Calculated upon the items subject to such charges, we obtain the amount of \$324,000 which will be included.

We allow for organization expenses at 2½ per cent. upon bare structural cost, which for this purpose will be assumed to be \$2,500,000

	\$62,500
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In view of all of the circumstances in this case, we allow for contractor's profit the sum of \$140,000. We regard this sum as liberal in any circumstances.

Under working capital, materials and supplies properly belong. These have been included in the appraisal of the physical property, and, in view of the facts testified in this case, we do not deem proper any further allowances for working capital.

There is no proof in the record of development cost; nor is there proof or inadequacy of a fair return at any time

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upon fair value. No allowance on account of development costs or past inadequacy of fair return can be made.

Throughout this valuation in the allowances made, full consideration has been given to the fact that the property valued was a harmonious operating system—a going concern—in successful operation.

In view of all the evidence, we conclude that the value of the property, for the purpose of fixing rates, does not exceed \$3,212,000, as follows:

Present value, September 30th, 1915	\$2,685,500
Overhead charges	324,000
Organization expenses	62,500
Contractor's profit	140,000
Total	\$3,212,000

The complete summary of value by classes of property is as follows:

Land	\$70,000
Buildings	217,500
Track and roadway and paving	1,285,000
Bridges	50,000
Overhead construction	312,000
Rolling stock	475,500
Office furniture and supplies and office cash	3,000
Materials and supplies and fuel	24,000
Power house machinery	248,500
	\$2,685,500
Overhead charges	324,000
Organization expenses	62,500
Contractor's profit	140,000
	\$3,212,000

EARNINGS AND EXPENSES.

The earnings and expenses of the Trenton and Mercer County Traction Corporation are summarized for the years

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1911 to 1914 in Exhibit C 1 a. Exhibit C 2 gives the detail for the calendar year of 1914, and also gives the increase or decrease of each item. Page 5 of Exhibit C 2 gives the detail of the construction account for the calendar year 1914.

Before attempting to draw any conclusions with regard to the relation between the net revenues, as shown on Exhibit C 1 a, it may be well to consider the differences between the operating expenses for 1914 and those of 1913. The operating revenues have shown an increase each year from 1911 to 1914, the average for the four years being \$736,840.38. The operating expenses have also increased each year, but not in the same proportion, the average for the four years being \$389,923.34. Taxes have shown an increase each year; average for the four years being \$45,061.89. The operating income, or net revenue, has not shown the same increase as has been the case with the gross revenues, the net revenue for the four years being as follows:

1911	.....	\$323,012.62
1912	.....	295,536.61
1913	.....	312,006.47
1914	.....	276,866.87

The average net revenue for the four years was \$301,856.

The financial statement submitted by the company appears to show a deficit, but in arriving at this deficit there has been included among the deductions the amounts required to pay the rentals which the Trenton and Mercer County Traction Corporation agreed to pay to owners of the Trenton Street Railway Company. These statements, therefore, cannot be considered as showing the actual relation between net revenues and value of property, when the relation between the earnings of the past four years and the value of the property used in the production of these revenues is considered. The charges to operating expenses

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made by the company have been inspected by the Board's examiners and it is found that they are properly classified.

Examination of the detail found in Exhibit C 2 shows that the disproportionate increase in operating expenses for 1914 over those for 1913 are due to several items, most important of which were the removal of snow and ice, which showed an increase of \$13,284, an increase in the charges to maintenance of way and structures of approximately \$5,000, and an increase in the cost of transportation amounting to \$11,507, the larger portion of which was due to an increase of wages of motormen and conductors.

Based upon the value of property found above, \$3,212,000, the average net revenue for the four years, \$301,855, shows a net return of 9.4 per cent. It will be noted that the value adopted above is as of September 30th, 1915, and it is quite clear that the value in each of the previous three years was less, so that if the average net revenue for the four years is set off against the average valuation for the same period, the percentage of net return will be higher. The average net revenue for the four years, \$301,855, affords a return of 7 per cent. upon \$4,312,000, and a return of 8 per cent. upon \$3,773,000. If the company were allowed to earn upon its claim of value, including all intangibles of \$1,139,952, and making a total of tangible and intangible values \$5,900,793, the average return would be 5.11 per cent.

It is claimed that the street railway properties in Trenton have not been maintained in a first-class manner, and it may be that a larger amount should be set aside for depreciation and expended upon the property each year. The amount expended in 1914 was approximately \$70,000. This included more than the average amount of replacement work. If, however, the allowance for depreciation is increased to \$135,000, the amount which Mr. Johnson alleges is required, thus decreasing the average net revenue from

Withdrawal of Tickets—Trenton and Mercer Co. Traction Corp.

\$301,855 to \$236,855, a net return of approximately 7.37 per cent. would still be shown on the value allowed.

After full consideration of all of the facts in this case, as developed from the testimony and the exhibits which have been voluminous, the Board finds and determines that the proposed withdrawal of the sale of six tickets for twenty-five cents by the Trenton and Mercer County Traction Corporation, and the increase, change or alteration in charge, rate or classification which would result therefrom, is not just and reasonable, and *disapproves* the same.

Dated December 13th, 1915.

ORDER.

This matter having been duly heard and the Board having, under date of December thirteenth, one thousand nine hundred and fifteen, made and filed a report containing its findings of fact and conclusions thereon, which report by reference thereto is made part hereof, the Board,

HEREBY FINDS AND DETERMINES that the Trenton and Mercer County Traction Corporation has not shown that the increase, change or alteration, which would be effected by the discontinuance of the sale of six tickets for twenty-five cents on street railways operated by it is just and reasonable, and the said Board not being satisfied that such increase, change or alteration is just and reasonable,

HEREBY ORDERS the said Trenton and Mercer County Traction Corporation not to put into effect the proposed withdrawal of the sale of six tickets for twenty-five cents on street railways operated by it, in said report mentioned.

This Order shall become effective at once.

Dated January 11th, 1916.

Increased Rates—N. J. and Penna. Traction Co.

No. 313.

IN RE PROPOSED INCREASE IN RATES OF FARE BETWEEN TRENTON AND PRINCETON BY NEW JERSEY AND PENNSYLVANIA TRACTION COMPANY.

Frank S. Katzenbach, Jr., for petitioner.

Harvey T. Satterthwaite, for Township of Lawrence.

Henry M. Hartmann, for City of Trenton.

William C. Vanderwater, for Borough of Princeton.

Application is made to increase rates for the transportation of passengers between Trenton and Princeton from fifteen to twenty cents, with corresponding increases for intermediate points.

In view of the fact that the road in question was constructed as, and continues to be, in a large measure, in competition with another line operating between Trenton and Princeton, fare on which is fifteen cents, and that in 1913 this Board permitted an increase in fare on this line from ten to fifteen cents for travel between the termini, with corresponding increases for travel between intervening points, and that improved service was inaugurated in 1914 on the line of New Jersey and Pennsylvania Traction Company, which, while increasing platform expense, has resulted in substantial increases of revenue, it not having been yet demonstrated whether the increases will not afford the company the added revenue desired, the Board concludes that the company has not satisfied it that the service performed reasonably warrants a charge in excess of the rates now received, or that the proposed increase, change or alteration is just and reasonable, and, therefore, disapproves the same.

Dated December 14th, 1915.

Salem and Pennsgrove Traction Co.—Approval of Ordinances, Mortgages and Securities.

No. 314.

IN THE MATTER OF THE APPLICATION OF SALEM & PENNSGROVE TRACTION COMPANY FOR APPROVAL OF FIRST AND SECOND MORTGAGES AND THE ISSUE OF \$450,000, FIRST MORTGAGE BONDS, \$100,000, SECOND MORTGAGE BONDS, AND \$224,000 OF STOCK, AND THE APPROVAL OF ORDINANCES OF THE BOROUGH OF PENNSGROVE, THE BOARD OF FREEHOLDERS OF SALEM COUNTY, THE CITY OF SALEM, UPPER PENNS NECK TOWNSHIP AND LOWER PENNS NECK TOWNSHIP.

Frank S. Katzenbach, Jr. and T. G. Hilliard, for the company.

The Board approves the ordinances of the Borough of Pennsgrove and the Board of Chosen Freeholders of the County of Salem, granting the necessary permissions to use the public highways requisite to carry out the proposed plan. The ordinances of the City of Salem and of Upper Penns Neck Township and Lower Penns Neck Township are not in compliance with the statute, as has been pointed out to the parties, and the Board is obliged to withhold approval of the same.

The application for approval of mortgages and securities was not filed in completed form by the petitioner until December 13th, 1915, so that the Board could not dispose of the matter until after that date.

The Board concludes that the cost of construction of the entire road from Salem to Pennsgrove with two sub-stations, located at Pennsville and Salem, and with equipment as specified in the petition, should not exceed \$554,505.

The plan is to issue \$100,000 of second mortgage six per cent bonds at eighty per cent of par; \$824,000 of stock at

Salem and Pennsgrove Traction Co.—Approval of Ordinances, Mortgages and Securities.

par; and the balance of first mortgage six per cent bonds at eighty per cent of par. The first mortgage bonds are to be redeemed at par by the use of all net corporate income up to \$40,000 per year, until the amount of bonds is reduced to \$225,000, and thereafter not less than two per centum per annum; the second mortgage bonds are to be redeemed at par by the use of net corporate income up to \$10,000 per year, until the amount is reduced to \$50,000, and thereafter not less than two per centum per annum.

The Board is of opinion that six per cent bonds, subject to redemption as provided in the mortgages, should yield more than eighty per cent of par.

The Board will, therefore, approve the execution and delivery of the first and second mortgages in the form finally submitted to the Board, and will approve the issue of \$224,000 of stock at par, and of first mortgage bonds to the amount of \$273,000 at ninety per cent of par, and of second mortgage bonds to the amount of \$100,000 at eighty-five per cent of par.

The petitioner desires to begin the construction of the road from Pennsgrove to plant No. 3 of the Dupont Company, above Pennsville, at once. For this purpose it is estimated that not more than \$300,000 will be required. This may be done under the ordinances, approval of which will immediately issue. The Board will permit the immediate issue of the proportions of stock and bonds above mentioned necessary to raise \$300,000 or so much thereof as is required to do the work immediately contemplated.

The parties have testified that it is not contemplated to do any work between Pennsville and Salem for upwards of 3 or 4 months. No loss of time, therefore, will be involved in doing what is necessary in the passage of ordinances and advertising in accordance with the statute as to the grant-

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ing of privileges by the City of Salem, as well as by the Townships of Upper Penns Neck and Lower Penns Neck, if they be necessary.

Dated December 21st, 1915.

No. 315.

IN THE MATTER OF THE COMPLAINT OF THE BOROUGH OF RED BANK AGAINST THE MONMOUTH COUNTY ELECTRIC COMPANY REGARDING FAILURE TO KEEP ITS RAILS AND ROAD-BED IN SAFE CONDITION.

The law of the State imposes on every street railway company the duty to keep in repair, to the satisfaction of the local authorities, the paving or surface material of the portions of the streets occupied by its tracks and if the tracks occupy unpaved streets, then, in addition, to keep in repair eighteen inches on each side of the portion of the street occupied by its tracks. This statutory obligation cannot be waived or modified by any ordinance of the Borough. The Board finds that the Monmouth County Electric Company does not maintain its property in certain portions of Broad and Monmouth Streets in Red Bank in proper condition to render safe, adequate and proper service.

Harold McDermott, for the Borough of Red Bank.

James D. Carpenter, for the Respondent Company.

Complaint is made by the Borough of Red Bank against the Monmouth County Electric Company charging that the company does not furnish safe, adequate and proper service. It is particularly charged that the company does not properly maintain its property in Monmouth Street, Front Street, Broad Street, West Street, Wharf Avenue and Shrewsbury Avenue;

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"That parts of said streets are in very bad condition due to the failure of said defendant company to properly keep its railroad right of way in repair; that the joints of the rails do not properly meet and the rails are badly worn out of line and surface; that the majority of the ties are rotted thereby permitting the rails to sink below the surface of the streets, causing holes and excavations dangerous to the travelling public; that the paving between the rails and adjacent to the rails owing to said failure of the company to keep its railroad and right of way in repair is dilapidated and unsafe."

There were other charges embodied in the complaint as to the dangerous rate of speed of the trolley cars and unnecessary noises but this part was not pressed.

The formal answer of the respondent admits its operation of a street railway through said public streets, but denies "the said streets are in bad condition due to *its* failure in the performance of any duty owed by it." The answer further alleges that the Borough of Red Bank requires the respondent to permit the Jersey Central Traction Company to operate its cars over its rails in certain of said streets; that the cars of said Jersey Central Traction Company are of excessive size and weight and that any impairment which may be in the streets and in the rails and ties of the respondent is due to the excessive and extraordinary burden imposed upon it by the franchise ordinance. Also that the jitney service between Red Bank and Long Branch has greatly diminished the revenues of the company and that the service, facilities and appliances furnished by the respondent are all that can fairly and justly be required considering its financial condition and its present revenues.

At the hearing both the counsel and president of the Monmouth County Electric Company admitted the present dangerous conditions existing in Monmouth Street and that it is not in proper repair. The evidence also shows that there are three dangerous places in and around the special work at the frog and at the switch points in Broad Street.

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Some repair work is undoubtedly needed on Front Street, Shrewsbury Avenue and West Street, but the conditions existing in Monmouth Street and Broad Street, according to the evidence, require serious and immediate attention.

The witness, Daniel H. Applegate, Jr., in his testimony (pages 15 and 16) describes the unsafe condition of the rails and ties in the street of the defendant company. He was asked:

"Q. Have you observed the cars passing up and down the (Monmouth) street?

"A. Only as to the fact that because of the depression of the rails in spots, as the cars moved over it, that they lurched in their movement to some extent."

Mr. Ingham in his testimony says:

"The tracks on Monmouth Street are badly worn out, the joints are low, evidently due to the ties being decayed at the joints and the joints badly cupped; the rail is corrugated and the paving adjacent to the rails is badly worn and depressed in places, making a more or less dangerous condition to vehicular traffic other than trolley cars.

"On Broad Street there are numerous places that the paving is badly gone adjacent to the rails, and the joints themselves in this track are badly depressed and known as cupped joints, chiefly owing to the decay of the ties underlying this track."

The further testimony of Inspector Ingham (pages 80 to 88) enumerates in detail the condition of the roadbed and the conditions of the streets complained of between the rails and for eighteen inches or two feet outside thereof, on December 16, 1915:

"There are practically fifty-five places right along on Monmouth Street a very casual observation of the track would show where they are because all of them are bad breaks in the paving and invariably at the joints. The ties have evidently rotted. In fact, I know of certain cases where they have rotted because I prodded along the track to try to find the remains of the ties. There was probably concrete, too, in there, but

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I doubt very much if it was a good mixture because the paving has sunken in places, and even if the ties had rotted out, the concrete should hold the rail up. The rail has gone down also very badly at the joints. These places at the present time are not particularly dangerous for the cars, that is, as far as the element of danger is concerned, but, as far as vehicular traffic is concerned, they are extremely dangerous, and, of course, they should be fixed.

"Q. Are these repairs you speak of all between the trolley tracks or eighteen inches from its rails?

"A. Yes, there are a few depressions that would extend outside of that."

William F. Hogan, President of the respondent company, is of the opinion that about two thousand feet of the tracks on Monmouth Street should be taken up, opening the street at a width of at least eight feet and replacing the whole construction at a cost of \$16,000.00 without contractors' profits. Such a large sum, he says, could not be procured because the company has paid no interest on its bonded debt since July 1st, 1914, and during the present year has earned very little over its operating expenses exclusive of the fixed charges.

Mr. Ingham, however, has given details of the necessary and urgent repairs. He testifies:

"It would take approximately for each one of these breaks that I have mentioned, commencing at the joint, that would necessitate the tearing up of the pavement, the placement of two to four ties, the placing of concrete, the renewal of the joints, the fish plates and, of course, it would also necessitate the relaying of the brick after the work had finished. It is itemized as follows: One-half yard of concrete at \$6.50 a yard—that would be \$3.25; from two to four ties (take four) at 50¢—that would be \$2.00; a continuous joint—that is the type of joint—\$1.55; the new brick will cost approximately 55¢; the relaying of the whole brick—I have taken about three yards at 20¢ a yard—would be 60¢; the labor of tearing up the brick and removing the old ties, joint, placing the new ties, concrete and new joint is \$3.00. That does not have anything to do with the placing of the brick, which, of course, is another matter. That would amount to \$10.95."

"Q. For what?

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"A. Per break. That is a liberal allowance because there are a number of those places that won't cost anything like that, but that is the average of those joints. There is also on Monmouth Street, east of the New York and Long Branch Railroad, a strip about thirty feet where the brick is absolutely gone. This is between the tracks of the Monmouth County Electric Company."

Ingham in his testimony (page 85) says:

"We will take a round figure of \$11.00 per joint. That would be approximately seventy bad places, making \$770.00 and 10% for contingencies would be \$847.00. That would, of course, put the track in such condition as you could operate over it for probably a couple of years; at the best that is a temporary repair.

"Q. Would that furnish safety to public travel?

"A. Yes, sir, it would. The principal failure in this track is in the paving at the joints, that is the danger to the travelling public, to the vehicular travel on Monmouth Street; and, of course, there are very bad joints there, too, as far as the track is concerned, but they are not in any great danger to the vehicular travel, but this amount will fix the paving so that that part of it will be good. That is, you could fix it for that——(meaning \$847.00).

"Q. Did you find any of the rails in either of these streets which required immediate attention?

"A. Yes, the joints are invariably bad.

"Q. Well, outside of the joints was the main body of the rail worn so that it was inadequate for service?

"A. No. Of course, this must simply be considered as a temporary expedient. I mean there is not very many years of life in that rail."

The franchise ordinance known as "Ordinance 27" permitting the respondent to operate its cars on Monmouth Street and Broad Street provides in Section 2 that:

"it shall also be the duty of said company to restore the surface of all streets and crossing walks disturbed by the laying of said tracks, to their former condition and to keep the whole road from curb to curb in good repair at its own expense at all times," etc.

In November, 1909, the Borough decided to pave Monmouth Street with a brick pavement on a concrete base.

The supplemental ordinance known as Number 68, was

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approved February 7th, 1910. By its terms and conditions, the Monmouth County Electric Company claims to have been relieved of any duty to repair the pavement in any part of the street, including the space between its rails. We do not agree with such a construction of the said ordinance and the contract, dated November 15th, 1909, between the Borough and the Monmouth County Electric Company, which preceded the formal passage of the ordinance both of which are in evidence. Mr. Hogan, the president of the company, and Mr. Gaul, its superintendent, did not so consider it. They have always recognized the obligation and have repaired the roadbed between the tracks and for eighteen inches each side thereof, from 1910 to the present time, but the complaint is that the repairs are improperly made and not adequately and safely performed, resulting in detriment to the railway property and the public.

On page 74, Mr. Hogan was asked:

"Q. As to Monmouth Street, Mr. Hogan, have you or have you not attended to making repairs as to that portion of the street which lies between the rails and for eighteen inches or thereabout on either side?

"A. Yes, sir."

Section 39 of the Street Railways Act (Comp. Stat. Vol. 4, page 5004) provides:

"That every street railway company incorporated under this act shall keep in repair, to the satisfaction of the local authorities, the paving, planking or other surface material of the portions of the streets, roads and bridges occupied by its tracks, or if such tracks occupy unpaved streets or roads shall, in addition, so keep in repair eighteen inches on each side of the portion occupied by its tracks; *provided*, that nothing in this act shall be deemed to affect or repeal existing provisions of any municipal charter or any ordinance or regulation heretofore passed and adopted."

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It cannot be doubted that this Board has the power after hearing, upon notice, by order in writing, to require the respondent company.

"(a) To comply with the laws of this State and any municipal ordinance relating thereto and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under any general or special law of this State.

"(b) To furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so." (P. L. 1911, Chapter 195.)

We find from the evidence that the company does not maintain certain portions of its property consisting of tracks, rails and roadbed in Monmouth Street, between Broad Street and the crossing of the New York and Long Branch Railroad in proper condition to render safe, adequate and proper service. The same is true of three places on Broad Street specifically designated in this report. At fifty-five places on the said Monmouth Street there appear dangerous breaks in the pavement of the street at the rail joints, the rails being badly worn and the ties decayed. Such a condition within a distance of about two thousand feet demands immediate repair. This necessary repair work can be done for \$847.00. No matter if this unsafe condition of the company's property is partly due to the operation of the cars of the Jersey Central Traction Company over said tracks by the terms of the original franchise ordinance, under which respondent is operating its system in said Borough, it is in no wise relieved thereby from its duty to the public. It is well to note, however, that the Jersey Central Traction Company pays to the Monmouth County Electric Company a regular rental mutually agreed upon between them, for the operation over its tracks.

It is essential in order to keep and maintain the property of the said railway company in safe, adequate and proper

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condition that it must maintain the roadbed between its tracks on all paved streets and for at least eighteen inches on either side thereof on unpaved streets.

We find and determine that such maintenance is necessary on the part of the said company for the rendering of safe and adequate service.

The statute of this State, hereinbefore referred to, imposes on every street railway company the duty to keep in repair, to the satisfaction of the local authorities, the paving or surface material of the portions of the streets occupied by its tracks and if the tracks occupy unpaved streets, then in addition, to keep in repair eighteen inches on each side of the portion of the street occupied by its tracks. This statutory obligation cannot be waived or modified by any ordinance of the Borough. The supplemental ordinance known by the number 68 is improvident and disadvantageous to the Borough of Red Bank. The paltry consideration of the payment of \$200.00 per annum only aggravates the injustice perpetrated on the public if we accepted the company's view of its intent. We conclude that the statutory duty was not and could not be changed by any action of the Borough Council. The duty of the company to keep portions of the streets in proper repair is a continuing one and if these repairs were satisfactory to the local authorities in the year 1910, they certainly have not been for two years last past. They have continually complained of their unsatisfactory condition.

We find and determine that the Monmouth County Electric Company does not now maintain its property in certain portions of Broad and Monmouth Streets, in Red Bank, in proper condition to render safe, adequate and proper service and that in order that such service may be furnished by it, it is requisite that the following work be done:

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(1) The repair of all joints in the track located in Monmouth Street between Broad Street and the crossing of the New York and Long Branch Railroad.

(2) The replacement of all decayed ties on said Monmouth Street within the distance just defined with new ties.

(3) The replacement and repair of the broken or worn out pavement between its tracks in Broad Street, having particular regard to the three places where special work, consisting of frogs and switches is installed.

(4) The replacement and repair of all broken or worn out pavement between its tracks in said Monmouth Street from Broad Street to the crossing of the New York and Long Branch Railroad aforesaid.

(5) The restoration and replacement of all pavement in Broad and Monmouth Streets disturbed by the said company in the making of any and all repairs or improvements, in a good and workmanlike manner, and with the same kind and quality as the existing pavement in said streets.

An order will so enter.

Dated December 27th, 1915.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report by reference thereto is hereby made part hereof, the Board finds and determines that the Monmouth County Electric Company does not maintain its property, in certain portions of

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Broad and Monmouth Streets, in Red Bank, in proper condition to render safe, adequate and proper service and the Board,

HEREBY ORDERS the Monmouth County Electric Company:

1. To repair all joints in the track located in Monmouth Street between Broad Street and the crossing of the New York and Long Branch Railroad;

2. To replace all decayed ties on said Monmouth Street, between Broad Street and the crossing of the New York and Long Branch Railroad, with new ties;

3. To replace and repair broken or worn-out pavement between its tracks in Broad Street, having particular regard to the three places where special work, consisting of frogs and switches, is installed;

4. To replace and repair all broken or worn-out pavement between its tracks in Monmouth Street from Broad Street to the crossing of the New York and Long Branch Railroad;

5. To restore and replace all pavement in Broad and Monmouth Streets (disturbed by said company in the making of any and all repairs or improvements), in a good and workmanlike manner, with the same kind and quality as the existing pavement in said streets.

This order shall become effective January 17th, 1916.

Dated December 27th, 1915.

No. 316.

MEN'S CLUB OF GRANTWOOD, ET AL.

VS.

PUBLIC SERVICE RAILWAY COMPANY.

The practice of charging a ten-cent fare to the Edgewater Ferry to passengers taking cars of the Palisade Line in Cliffside Park while transferring passengers to the second fare zone to that ferry is held to be unreasonable and unjustly discriminatory. The denial of transportation to passengers taking said cars in Cliffside Park for a single fare to their nearest ferry at Edgewater is a failure to render such passengers proper and adequate transportation facilities.

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J. C. Agnew, for the complainants.

L. D. H. Gilmour, for the company.

The petitions in this case were originally filed by the Men's Club of Grantwood, and a number of residents of Cliffside, a municipality in Bergen County, lying between Fort Lee and the Hudson County boundary line. At the hearing, counsel for the municipality asked and was granted leave to intervene on its behalf.

The relief demanded by the petitioners is two-fold: (1) that the respondent be ordered to eliminate the switch at Palisades Junction, a point where its Palisade line crosses its Hudson River line; (2) that the respondent be directed to continue the running of its Palisade line cars at Palisade Junction east along the Hudson River line to Edgewater Ferry, or, in lieu thereof, to issue transfers from the Palisade line to the Hudson River line cars. It appears that the Palisade line runs north and south between Jersey City in Hudson County, and Coytesville in Bergen County. It makes connections with the various ferries in Weehawken and Hoboken, and, by means of transfers, with the Jersey City Ferry lines. The northerly limit of the southerly fare zone of this line is Palisade Junction. The northerly limit of the northerly fare zone is Coytesville. At Palisade Junction, some of the cars on the Palisade line are turned back on a switch at this point. This is the switch which the petitioners desire to have eliminated. It is on the private property of the respondent. It seems that persons coming from Palisade Park, a short distance south of Palisade Junction, are in the habit of crossing the private right of way of the railroad company in order to reach the cars at the Junction, although the respondent has erected barriers across the street there. It also appears from the maps in

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evidence that very little, if any, time or travel can be saved by persons coming from Palisade Park by using the private right of way of the respondent instead of Columbia Avenue, a public street which runs to the platforms on the east and west side of this line at the Palisade Junction station. We can see no reason for directing the company to abolish this switch. Because of the necessity of turning back cars at this point, the company requires a switch, and this one, located on its own property and protected by barriers, would seem to be as suitably located for all purposes as it is possible to have it.

Upon the second ground of complaint, the testimony was voluminous, but the following facts would appear to be deducible from it: That the Palisade line extends from Fourth Street, Union Hill, to Coytesville, Bergen County, and is divided into two fare zones, the first fare zone comprising the distance between the Weehawken Ferry and Palisade Junction; the second fare zone, the distance between Palisade Junction and Coytesville. As a matter of fact, the first fare zone extends from the Weehawken Ferry to Forty-second Street, New York, to Palisade Junction, a distance of five and two one-hundredths miles. The second fare zone between Palisade Junction and Coytesville is two and ninety-three hundredths miles. In the first fare zone, free transfers are given to other lines, by which it is possible for passengers to go to the other ferries in Hoboken and Jersey City, and to the Greenville car barn at the southerly end of Jersey City.

It is possible, therefore, for a person to travel from the Palisade Junction which, besides being the dividing point between the two fare zones, is near the northerly boundary line of Cliffside, by means of transfers, nine miles or more to the Hoboken and Jersey City ferries, and thirteen miles to Greenville. No transfer, however, is given at Palisade

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Junction on the northerly end of the zone to the Hudson River line, running to the Edgewater Ferry for 130th Street, New York. The people of Cliffside complain that, the northerly boundary of their municipality being practically coincident with the northerly limit of the fare zone, they find themselves compelled to pay a second fare upon their arrival at Palisades Junction, if they desire to go east on the Hudson River line to the Edgewater Ferry. The latter place is one and six-hundredths miles from Palisade Junction. The length from the northern to the southern boundary of Cliffside is a little less than two miles. The petitioners desire the privilege of a free transfer to the Hudson River line easterly to the Edgewater Ferry. The Hudson River line crosses the Palisade line at Palisade Junction, and it constitutes the division line between the northerly and southerly fare zones on the latter railway. It appears in evidence that the respondent issues transfers to the Hudson River line, both east and west, to persons proceeding south in the second or northerly fare zone. It thus happens that the residents of Cliffside, located in the southerly fare zone, are denied free transfers to the Edgewater Ferry upon the Hudson River line cars, while those living in the northerly fare zone are given such transfers. The residents of Cliffside, therefore, are compelled to pay two fares for a trip to the Edgewater Ferry, while the residents of Coytesville and points on the Palisade line north of the intersection of the Hudson River and the Palisade lines have to pay only one fare. The petitioners claim that the Palisade line cars should be run to the Edgewater Ferry, or that transfers should be issued to them at the Junction with the Hudson River line, so that they may reach said ferry for a single fare of five cents.

They say that, in view of the fact that a number of cars on the Palisade line are turned back at Palisade Junction,

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these cars, or some of them, might, without much loss of time, be continued to the Edgewater Ferry, and they point out that, at times, the respondent runs special cars in that way. It appears in the testimony that a Hudson River line car takes six minutes for a trip from Palisade Junction to Edgewater Ferry, and about the same time for a return trip; that a Palisade line car takes about twenty-four minutes from Palisade Junction to the Weehawken Ferry. The residents of Cliffside, and particularly those in the northerly part of that municipality, insist that the use of the Edgewater Ferry instead of the Weehawken Ferry would result in a saving of time to those who desire to go to the northern part of Manhattan Island. Adjoining Cliffside on the west is the Borough of Fairview, and that portion of it which lies on the Palisade or Heights Section is likewise served by the Palisade line. The southerly limit of Fairview is also the northerly boundary line of Hudson County. A witness for the respondent testified that the population of Fairview as far west as the Dallytown Road, as well as Cliffside, was served by the Palisade line, and that the total population of the two Boroughs, thus served, is seven thousand, three hundred and seventy.

The respondent contends that, if the Palisade line car is continued to the Edgewater Ferry or a free transfer given to the Hudson River line, the first fare zone on the Palisade line will be extended the distance from Palisade Junction to Edgewater Ferry, namely, one and six one-hundredths miles, making the total distance to the zone limit for the first fare zone on the Palisade line six and eight one-hundredths miles, and that, therefore, a passenger might get on at the Weehawken Ferry and ride to the Edgewater Ferry, or might, by means of transfers from Hoboken and Jersey City cars to the Palisade line, ride even a greater distance to the Edgewater Ferry. While such a

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thing would be possible, we know that the ordinary impulse of a person desiring to go to New York is to get there by the nearest ferry; and we do not think there would be many persons who would transfer from Hoboken and Jersey City, along the circuitous route uphill to the Palisades in order to reach the Edgewater Ferry. We are of the opinion that practically the only persons who would find it advantageous to use the Edgewater Ferry are those represented by the petitioners, and who live in Cliffside and the part of Fairview above mentioned. If their demand is granted, the longest ride that anyone in Cliffside or Fairview could get on a trip to the Edgewater Ferry is three miles, that being the distance from the southerly boundary line of Cliffside and Fairview to the Edgewater Ferry, the nearest ferry to New York. This, in the absence of evidence to the contrary, and in the light of evidence that the respondent, on some lines permits a ride of over seven miles for a single fare, would not seem to be an unreasonable distance for a five-cent fare. We think that the present application may be distinguished from those in which a demand for an extension of a fare zone limit is made. The petitioners do not desire to ride into the second fare zone for a single fare. They contend, however, as the Hudson River line crosses the Palisade line at right angles at the division point of the fare zones, the granting of a transfer to the Hudson River line, or the switching of Palisade line cars to the Hudson River line, and running them on the latter railway east to the Edgewater Ferry, is not an extension of the fare zone of the Palisade line. They are supported in this view by the practice of the company in granting transfers from the northerly zone to the Hudson River line. If it is an extension of the fare zone to grant such a privilege to those in the southerly fare zone, it must also be an extension of the fare zone to grant it to those who live in the northerly zone.

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Their contention, in this respect, is further supported by the testimony of a witness for the respondent. The auditor of the company was asked on cross examination:

"Q. Isn't it a fact that your company could issue transfers at Palisade Junction, to people in Cliffside Park Borough, going north to the ferry, without interfering with your zone system of operation?

"A. It could be done."

We think that the people of Cliffside and Fairview, served by the Palisade line, should not be compelled to ride from three to five miles to get to the Weehawken Ferry to New York, when they would have to ride only from one to three miles to go to the Edgewater Ferry. We think that, if the respondent is willing to carry people from Cliffside and Fairview, four or five miles to the Weehawken Ferry, it would be less burdensome to them to carry people a much shorter distance to the Edgewater Ferry for the same fare. We think, also, that a number of the employees of a sugar refining plant and a marble works, located in close proximity to the Edgewater Ferry, would avail themselves of the services of the trolley line if they could reach their places of employment for a five cent fare, instead of walking up and down the two hundred and forty foot hill as they now do.

We conclude, therefore, (1) That the practice of charging a ten cent fare to the Edgewater Ferry to passengers taking cars of the Palisade line in Cliffside Park, while transferring passengers of the second fare zone to that ferry, is unreasonable and unjustly discriminatory; (2) That the denial of transportation to the passengers taking said cars in Cliffside Park for a single fare to their nearest ferry at Edgewater, is a failure to render to such passengers proper and adequate transportation facilities.

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An order will, therefore be entered directing the respondent to give to persons boarding its northbound cars in Cliffside Park transfers to the Hudson River line, permitting them to ride to the Edgewater Ferry for five cents, and to give to passengers on the westbound cars of its Hudson River line transfers to southbound cars on the Palisade line, which last mentioned transfers shall be good for a ride on the Palisade line to the southerly boundary of Cliffside Park.

Dated January 4th, 1916.

ORDER.

This case being at issue, upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report by reference thereto is hereby made part hereof, the Board

FINDS AND DETERMINES that the practice of the Public Service Railway Company in charging a ten cent fare to the Edgewater Ferry, to passengers from Cliffside Park and the part of Fairview served by the Palisade line, while transferring passengers of the second fare zone to that ferry, is unreasonable and unjustly discriminatory; and that the denial of transportation to such passengers, for a single fare, to the nearest ferry at Edgewater, is a failure to render to them proper and adequate transportation facilities, and the Board

HEREBY ORDERS the Public Service Railway Company to give to all persons boarding its northbound cars in Cliff-

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side Park, who on payment of fare of five cents on such cars request transfers to its Hudson River line, said transfers, the same to be accepted by the company for a ride to the Edgewater Ferry, within the time limit now set by said company for the use of transfers at other points on its railway system, and the Board

FURTHER ORDERS the Public Service Railway Company to give to all persons boarding at Edgewater the westbound cars on its Hudson River line, who on payment of a fare of five cents request transfers to southbound cars on the Palisade line, said transfers, which transfers shall be accepted, within the time limit as above referred to, for a ride on its Palisade line to the southerly boundary of Cliffside Park.

This order shall become effective January 25th, 1916.

Dated January 4th, 1916.

No. 317.

MOUNTAIN ICE COMPANY

VS.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

In determining the cost of the service performed by the respondent in transporting ice the following procedure was adopted:

First. The operating expenses, taxes, hire of equipment, joint facility rents, and other miscellaneous rents were divided between the expenses of freight service and the expenses of passenger service. Both the whole line figures and the New Jersey figures were analyzed.

Second. The freight expenses and other costs were divided between movement expenses and terminal expenses.

Third. Unit costs were computed.

Fourth. The valuation of the respondent as shown by its book cost of road and equipment was divided between freight and passenger; and the freight portion was divided between movement and terminal. Units of

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return upon the investment per ton and per ton mile were then computed.

Finally the particular cost of the intrastate New Jersey ice business was computed and to the cost was added a return upon the investment at certain rates of return. The Board finds and determines that the rates on ice in car loads on the line of the Delaware, Lackawanna and Western Railroad within the State of New Jersey of 50 cents per ton in box cars and 55 cents per ton in ice cars are just and reasonable. The Board further finds and determines that it is not satisfied that a proposed increase in said rates is just and reasonable, and disapproves the same.

Robert S. Hudspeth and Carlyle Garrison, for petitioner.

John L. Seager, for respondent.

Mountain Ice Company filed a complaint alleging that the rates on ice in carloads within the State of New Jersey of fifty cents per ton in box cars and fifty-five cents per ton in ice cars from the ice-houses of the complainant at Netcong, Hopatcong, and Denville to Hoboken, Jersey City, Newark, the Oranges and other stations on the line of railroad of the Delaware, Lackawanna and Western Railroad Company are unjust and unreasonable; and further complaining of lack of proper service. Answer was made by respondent, and the matter went to hearing. During the pendency of the proceeding, the respondent company put into effect an increase of five per cent in these rates. Complaint was made of such increase. It was, therefore, stipulated that the two complaints should be consolidated and heard together, proofs to be used in both cases, without affecting the relative burden of proof.

Some testimony was taken upon the question of the adequacy of service, but the matter was finally submitted upon the sole question of the reasonableness of the rates.

The Board's primary problem is to determine, as nearly as may be, the cost of the service performed in handling ice within the State of New Jersey under present conditions.

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The procedure, in the consideration of this problem, has been as follows:

First, The operating expenses, taxes, hire of equipment, joint facility rents, and other miscellaneous rents were divided between the expenses of freight service and the expenses of passenger service. Both the whole line figures and the New Jersey figures were analyzed.

Second, The freight expenses and other costs were divided between movement expenses and terminal expenses.

Third, Unit costs were computed.

Fourth, The valuation of the respondent as shown by its book cost of road and equipment (whole line Exhibit R-20, and New Jersey Exhibit R-23) was divided between freight and passenger; and the freight portion was divided between movement and terminal. Units of return upon the investment per ton and per ton mile were then computed.

Finally the particular cost of the intrastate New Jersey ice business was computed and to the cost was added a return upon the investment at certain rates of return. Detailed computations of all quantities are to be found in the appendix of this report.

AVAILABLE DATA.

The record furnished no satisfactory figures for the separation of operating expenses between services. The annual report of the Delaware, Lackawanna and Western Railroad Company to the Board furnished revenues and expenses by primary accounts. Traffic statistics were in all cases taken from this report. Train miles, track miles, locomotive miles, tons of freight handled, tons of freight carried one mile, fuel consumption of locomotives in the different services, hire of equipment, taxes, joint facility rents

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and other miscellaneous items were taken from the report of the carrier to the Board. Book cost of road and equipment, and all particular figures relating to the ice business were taken from the record of this case and are credited in proper manner. It was necessary to take ratios of expense per freight train mile to expense per passenger train mile and expense per freight locomotive mile to expense per passenger locomotive mile from the record of certain carriers in the Western Rate Advance Case I & S 555, 35 ICC 497. These items are in all cases credited to their sources at the time they are used.

FREIGHT-PASSENGER SEPARATION.

The characteristic basis used in this apportionment was the revenue-train-mile. The separation was accepted with the reservation *that the method is not necessarily final*. Our computations refer to the year ending June 30th, 1914.

Two per cent of freight operating expenses was credited to freight service and the same amount charged to passenger service to care for the net amount of traffic carried by freight trains for the passenger service over the amount of traffic carried by passenger trains for the freight service. The amount used is arbitrary and is based on various studies. This correction is substantially the correction used by the St. Louis and San Francisco Railroad Company in the Arkansas Rate cases (United States District Court for the Western Division of the Eastern District of Arkansas, 222 Fed. Rep. 539) and was approved in that case by the Court.

Taxes were divided between freight and passenger service on the basis of operating expenses adjusted as indicated above. Hire of equipment is reported separately for

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freight and passenger cars. Actual amounts were used. Joint Facility and Miscellaneous Rents were divided between freight and passenger service on the adjusted percentages of operating expenses.

The Whole Line apportionment and the New Jersey Apportionment were carried out in the same manner. For convenient reference the gross operating revenues for the Whole Line and for New Jersey have been assembled and are stated in the appendix on pages adjacent to the freight-passenger apportionment.

**SEPARATION OF FREIGHT OPERATING EXPENSES AND OTHER COSTS
BETWEEN MOVEMENT SERVICE AND TERMINAL SERVICE.**

The expenses of movement service are the expenses of moving freight between stations or terminal districts, and include the expenses of transfer and re-classification en route. The expenses of terminal service are the expenses incurred at the originating and terminating stations in getting a shipment from the receiving point to the road train and from the road train to the delivery point. In handling the division of expenses between movement and terminal services, we have included in terminal service all operations at terminals, part of which are transfer and re-classification expenses. Before unit costs were computed, proper deductions from the terminal expenses were made for transfer and re-classification as shown below.

Maintenance of Way and Structures expenses were divided on the track mile basis. In this basis, yard tracks and sidings were assumed to cause one-half as much expense per track mile as main line tracks.

Operating expense Account 99, Loss and Damage-Freight, was excluded by us from the computation of unit freight costs and from the computation of the cost of the ice busi-

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ness. The record shows that loss and damage claims are infrequent and for small amounts. However, the computations were repeated including a normal average amount of loss and damage for the ice business.

Transportation Accounts 67 to 78, inclusive, were all, provisionally, assigned to terminal service. Accounts 62, 80 to 85 inclusive, 88, 89, 90, 92, 94, 102, 104 and 105 were assigned to movement service. Other transportation expenses were divided overhead to the assigned expenses. By "overhead" we mean on the percentages of the directly located accounts.

Maintenance of Equipment expenses were grouped and divided on the same percentages as the Transportation Expenses.

Traffic and General Expenses were divided overhead to Maintenance of Way and Structures, Maintenance of Equipment and Transportation expenses.

The accuracy of this method has been tested by comparing its results with the results of a detailed separation by primary accounts when it was found that the results by the two methods correspond within a fraction of one per cent.

The credit to freight service for the passenger part of freight operating expenses was divided between movement and terminal expenses on the percentage of operating expenses in each service.

From special reports of carriers to the Interstate Commerce Commission for May, 1912, the operating expenses of Accounts 67 to 78, inclusive, averaged \$.2963 per car for classification yards of all kinds. Considering the ratio of Accounts 67 to 78, inclusive, to Accounts 80 to 89, inclusive, we found the total cost attributable to classification yards to be \$.87 per car. Expenses to the amount of \$.87 per loaded car were deducted from freight terminal expenses and added to freight movement expenses to care for re-

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classification. It was assumed that a car was re-classified each 100 miles. The credit to terminal expenses for re-classification and transfer expenses was made for the business as a whole.

Further deduction from the amount of terminal expenses was made for the extra handling costs (loading, transfer, unloading, etc.) of the merchandise business L. C. L. Information collected from various sources points to the conclusion that \$1.00 per ton is a fair average extra cost of handling merchandise L. C. L. Freight. (Railway Age Gazette Sept. 4, 1914; special reports to the Interstate Commerce Commission for May, 1912; Jas. Peabody before the Committee on Railway Mail Pay, page 1142; Study of C. B. & Q. freight houses at Lincoln, Neb., by U. G. Powell). One dollar per net ton of L. C. L. was deducted from terminal costs and carried under a separate heading. (See the movement-terminal separation in the appendix). This amount is intended to cover a double handling, once at point of origin and once at point of destination. Since intrastate shipments have both terminals in New Jersey, and interstate shipments have one terminal in New Jersey, one-half the number of interstate tons L. C. L. was added to the number of intrastate tons L. C. L. to give the equivalent number of tons L. C. L. handled within the state. The last sentence applies only to the New Jersey apportionment.

Taxes, Hire of Equipment, Joint Facilities and Miscellaneous rents were divided on the percentages of operating expenses, after modification for transfer and L. C. L. business, into movement, terminal and extra L. C. L. branches.

For the reason that interstate shipments and intrastate shipments are handled in the same terminals by the same forces at the same time, and moved between stations in the same trains, it must be evident that the units of cost are the same for interstate and intrastate business. Of course,

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an intrastate shipment is handled twice at terminals within the state, and in general has a shorter haul than an interstate shipment, but the actual units of terminal cost per car, terminal cost per gross ton and movement cost per gross ton mile, are the same for interstate as for intrastate shipments.

DERIVATION OF UNIT COSTS.

Cost is used throughout this report to denote operating expenses including loss and damage, taxes, hire of equipment, joint facility and miscellaneous rents. It does not include any amount for interest, dividends, surplus, profit on the transaction or other net amount above the actual out-of-pocket expenditure.

Terminal expenses vary to a certain extent with the gross weight of the car. The Transportation group of operating expenses was analyzed to determine to what extent this variation occurred. It was found that expenses which varied with the loading per car were about one-third of the total. One-third of the terminal cost was divided by the number of gross tons given a double handling, and two-thirds were divided by the number of cars given a double handling. The unit costs derived were the cost per car and the cost per gross ton for terminal handling of carload business.

The total movement cost was divided by the total gross ton mileage including empty to derive the movement cost per gross ton mile. Gross ton mileage is the sum of (1) the net ton mileage of revenue freight, (2) the tare ton mileage of loaded cars, and (3) the ton mileage of empty cars. To obtain empty ton mileage and tare ton mileage, the proper car mileage was multiplied by an average tare weight of freight cars—18.01 tons.

Mountain Ice Co. vs. D., L. & W. R. R. Co.

A modification of gross ton mile unit cost for the larger train resistance per ton of light cars was considered. On a two per cent grade the resistance of a 20-ton (gross) car is about 47.9 pounds per ton and the resistance of a 60-ton (gross) car is about 43.7 pounds per ton. Similar differences were found on other ruling grades. This variation applies only to the road train accounts, and to them only when the locomotive is working at its maximum load. The variation is so small that it seemed best, in the interest of simplicity, to neglect this factor and use a gross ton mile basis for movement costs.

COMPUTATION OF COST OF THE ICE BUSINESS IN NEW JERSEY.

From the units derived in the appendix we are able to compute the cost per ton of the ice business. The testimony is far from clear on the handling of cars made empty after a lading of ice. If they were returned to the ice plants there would be, of course, 100% as great empty car mileage as loaded car mileage. If the cars were put into general freight handling after being loaded with ice, there would be the normal average percentage of empty car mileage to loaded car mileage. On the Delaware, Lackawanna and Western Railroad in New Jersey for 1914 this normal percentage of empty car mileage was 52.49% of the loaded car mileage. The truth lies between 52.49% and 100%. Computations were made on both bases. Part of the ice moves in ice cars with a tare weight of about 17.20 tons and part of it moves in light box cars.

The Lackawanna has a number of light box cars weighing about 16.00 tons tare per car. Computations were made on the basis of both of these tare weights.

Ice is one of the cheapest commodities which moves. It would seem reasonable that ice should pay 4% on the investment attributable to that business. Our computations

Mountain Ice Co. vs. D., L. & W. R. R. Co.

have been made on the assumption of this rate of return, also on the basis of 5% return and 6% return for comparison. Loss and damage has been included in one set of computations, as shown below.

Without showing the simple calculations in the body of the report, the results may be summed up in a single table showing for several cases the cost and cost plus return at certain rates for the intrastate ice business in the state of New Jersey. Such a table has been prepared and is given below:

Delaware, Lackawanna & Western R. R.

New Jersey, year ended June 30, 1914.

Cost only, together with cost plus certain rates of return, for Ice in the State of New Jersey, Loading 29.8 tons per car. Average haul, 41.8 miles.

	<i>Cost only per net ton.</i>	<i>Cost plus 4% per net ton.</i>	<i>Cost plus 5% per net ton.</i>	<i>Cost plus 6% per net ton.</i>
1. Ice in 16.0 tare ton box cars, empty car mileage 100% of loaded. No loss and damage	37.89c	51.51c	54.91c	58.31c
2. Same including loss and damage	38.87	52.49	55.89	59.29
3. Ice in 17.2 tare ton ice cars, empty car mileage 100% of loaded. No loss and damage	38.78	52.40	55.80	59.20
4. Same including loss and damage	39.76	53.38	56.78	60.18
5. Ice in 16.0 tare ton box cars, empty car mileage 52.49% of loaded. No loss and damage	35.63	49.25	52.65	56.05
6. Same including loss and damage	36.61	50.23	53.63	57.03

Mountain Ice Co. vs. D., L. & W. R. R. Co.

CONCLUSION AS TO COST.

It is obvious from the preceding table that ice in box cars at a rate of 50 cents per net ton pays a return of 3.3% and 4.1% on the investment, and that ice in ice cars at a rate of 55 cents per net ton pays a return of between 4.5% and 4.8% on the investment. An advance of five per cent on the present rates, namely to 53 cents per net ton in box cars, and to 58 cents per net ton in ice cars would increase the rates of return on the investment to about 4.4% and 6.1% respectively. Presumably the service in ice cars is worth more than in box cars. A return of 3.3% may be regarded as small, while a return of 6.1% may be considered as high for ice. It is clear that no reduction of the present rates can be justified on the grounds of cost.

COMPARISON WITH OTHER RATES.

The carrier furnished two compilations, rates on ice, (Ex. R. 14) and other low grade commodities, (Ex. R. 15). The rates were taken from tariffs filed with the Interstate Commerce Commission and were duly credited. Ice rates were selected from certain other carriers. Rates on the other low grade commodities were in effect on the Delaware, Lackawanna and Western Railroad. These exhibits are most helpful when reproduced in graphic form. (See Fig. A and Fig. B.) Present ice rates on the Delaware, Lackawanna and Western Railroad for the average haul of 42 miles have also been shown. The cost plus four per cent tariff resulting from our cost studies has been added to the graph of Exhibit R-14.

Attached hereto is a distance tariff computation for the intrastate New Jersey ice business. (See Table 1.)

Mountain Ice Co. vs. D., L. & W. R. R. Co.

The Board, therefore, finds and determines that the rates on ice in carloads on the line of the Delaware, Lackawanna and Western Railroad Company within the State of New Jersey, of 50 cents per ton in box cars and 55 cents per ton in ice cars are just and reasonable.

The Board further finds and determines that it is not satisfied that the increase in said rates is just and reasonable and disapproves the same.

Dated January 11th, 1916.

(See data on following pages relating to this case.)

Mountain Ice Co. *vs.* D., L. & W. R. R. Co.

TABLE "I."

Delaware, Lackawanna & Western R. R.

New Jersey—1914 Intrastate ICE

Rates in cents per net ton.

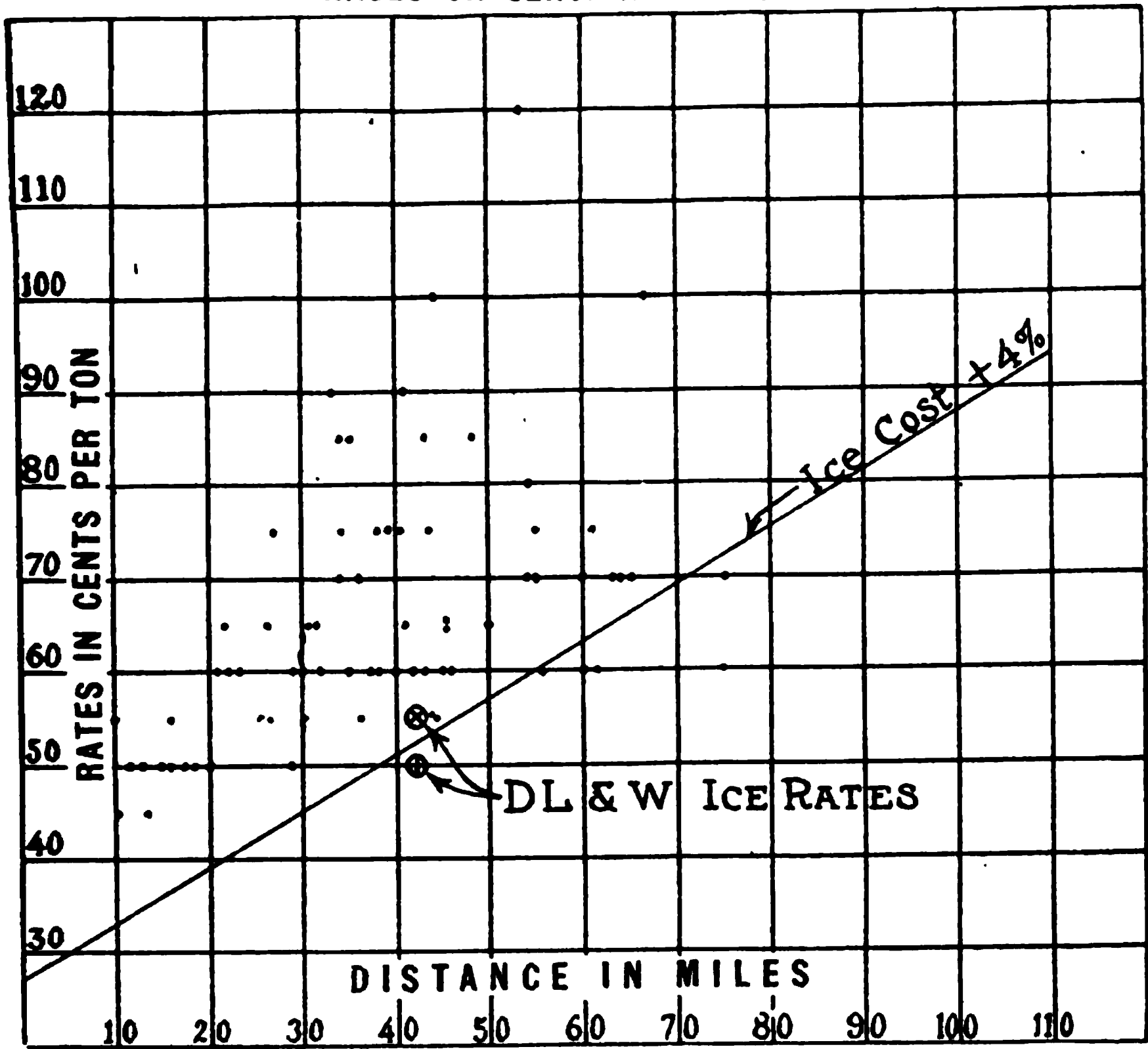
<i>Miles</i>	<i>Box cars, 16.0 tons tare, 100% empty car mileage.</i>		<i>Ice cars, 17.2 tons tare, 100% empty car mileage.</i>		<i>Box cars, 16.0 tons tare, 52.94% empty car mileage.</i>	
	<i>Cost only</i>	<i>Cost +4%</i>	<i>Cost only</i>	<i>Cost +4%</i>	<i>Cost only</i>	<i>Cost +4%</i>
0	\$19.51	\$27.01	\$19.69	\$27.19	\$19.51	\$27.01
5	21.71	29.94	21.97	30.20	21.44	29.67
10	23.91	32.87	24.25	33.21	23.37	32.33
15	26.10	35.80	26.54	36.23	25.29	34.99
20	28.30	38.73	28.82	39.24	27.22	37.64
25	30.50	41.66	31.10	42.26	29.15	40.30
30	32.70	44.59	33.39	45.27	31.08	42.96
35	34.90	47.52	35.67	48.29	33.00	45.62
40	37.09	50.45	37.95	51.30	34.93	48.28
45	39.29	53.38	40.24	54.32	36.86	50.94
50	41.49	56.31	42.52	57.33	38.78	53.60
55	43.69	59.24	44.80	60.35	40.71	56.26
60	45.88	62.17	47.08	63.36	42.64	58.92
65	48.08	65.10	49.37	66.38	44.57	61.58
70	50.28	68.02	51.65	69.39	46.49	64.24
75	52.48	70.95	53.93	72.41	48.42	66.90
80	54.68	73.88	56.22	75.42	50.35	69.56
85	56.87	76.81	58.50	78.44	52.28	72.22
90	59.07	79.74	60.78	81.45	54.20	74.88
95	61.27	82.67	63.06	84.48	56.13	77.53
100	63.47	85.60	65.35	87.48	58.06	80.19
105	65.67	88.53	67.63	90.50	59.99	82.85
110	67.86	91.46	69.91	93.51	61.91	85.51
115	70.06	94.39	72.20	96.53	63.84	88.17
120	72.26	97.32	74.48	99.54	65.77	90.83
125	74.46	100.25	76.76	102.56	67.70	93.49
130	76.66	103.18	79.04	105.57	69.62	96.15
135	78.85	106.11	81.33	108.59	71.55	98.81
140	81.05	109.04	83.61	111.60	73.48	101.47
145	83.25	111.97	85.89	114.62	75.40	104.13
150	85.45	114.90	88.18	117.63	77.33	106.79

No loss and damage is included in these tariffs. Loss and damage adds about one cent per ton to all figures.

Mountain Ice Co. vs. D., L. & W. R. R. Co.

FIGURE A.

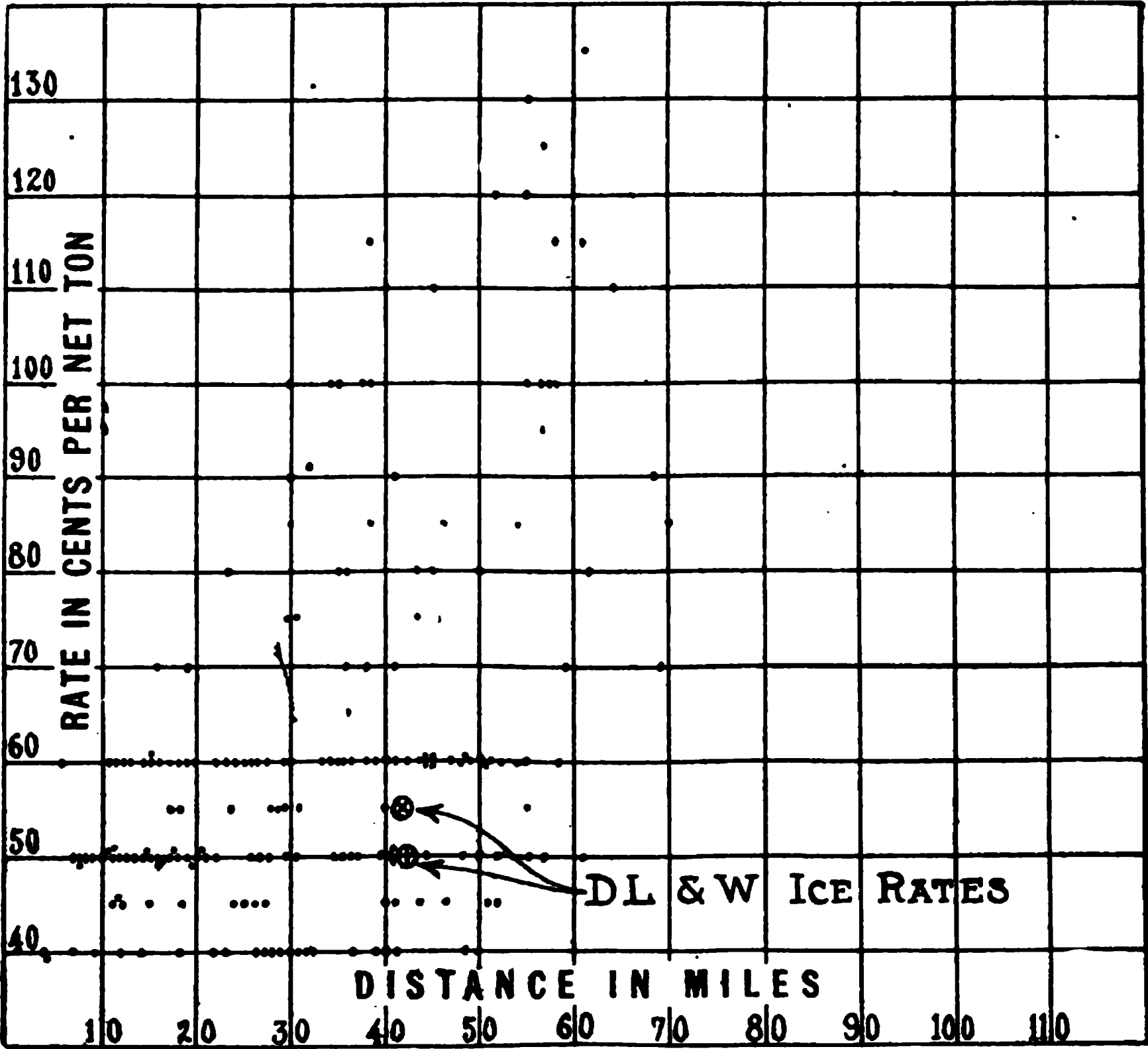
GRAPH OF EXHIBIT R-14, RATES ON ICE ON THE SHORTER
HAULS ON CERTAIN RAILROADS



Mountain Ice Co. vs. D., L. & W. R. R. Co.

FIGURE B.

GRAPH OF EXHIBIT R-15, RATES AND DISTANCES ON LOW GRADE
COMMODITIES ON THE DELAWARE, LACKAWANNA & WESTERN R. R.



DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Whole Line, Year Ended June 30, 1914.

Operating Revenues—Gross Earning Basis.

	Total.	Freight.	%	Passenger.	%	Basis.
1 Freight	\$28,634,756	\$28,634,756	....	.....	....	....
2 Passenger	8,508,362	.....	....	\$8,508,362	....	....
3 Excess Baggage	41,080	.....	....	41,080	....	....
4 Parlor and Chair Car	12,296	.....	....	12,296	....	....
5 Mail	210,059	.....	....	210,059	....	....
6 Express	846,458	.....	....	846,458	....	....
7 Milk (On Passenger Trains)	1,040,292	.....	....	1,040,292	....	....
8 Other Passenger Trains	10,981	.....	....	10,981	....	....
9 Switching	222,478	211,354	95.00	11,124	5.00	....
10 Special Service	10,412	10,412	....	.....	....	....
11 Miscellaneous	29,828	21,768	72.98	8,060	27.02	O. H.
12 Station and Train Privileges	37,385	.....	....	37,385	....	....
13 Parcel Room Receipts	17,992	.....	....	17,992	....	....
14 Storage Freight	24,327	24,327	....	.....	....	....
15 Storage Baggage	6,338	.....	....	6,338	....	....
16 Car Service	139,770	139,770	....	.....	....	....
17 Telegraph & Telephone	10,544	7,695	72.98	2,849	27.02	O. H.
18 Rents and Buildings	4,997	3,647	72.98	1,350	27.02	O. H.
19 Miscellaneous	10,929	7,976	72.98	2,953	27.02	O. H.
20 Joint Facility Rev.—Dr. ....	.....	.....	....	.....	....	....
21 Joint Facility Rev.—Cr. ....	.....	.....	....	.....	....	....
Total Operating Revenues,	\$39,819,284	\$29,061,705	72.98	\$10,757,579	27.02	....
Total, Excluding Mail and Express..	\$38,762,767	29,061,705	74.97	9,701,062	25.03	....

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Whole Line, June 30, 1914.

Mountain Ice Co. vs. D., L. & W. R. R. Co.

	Total.	Freight.	%	Passenger.	%
Maintenance of Way and Structures	\$5,213,785	\$3,220,034	61.76	\$1,993,751	38.24
Maintenance of Equipment	6,168,918	4,763,271	77.21	1,405,647	22.79
Traffic	878,896	544,644	61.97	334,252	38.03
Transportation	12,509,901	9,185,461	73.43	3,324,440	26.57
General Expenses	849,909	607,770	71.51	242,139	28.49
Total	25,621,409	18,321,180	71.51	7,300,229	28.49
Adjustment 2% of Freight.....	.....	.....	....	.....	....
Operating Expenses to Passenger .....	.....	Cr. 366,424	....	366,424	....
Adjusted Operating Expenses	25,621,409	17,954,756	70.08	7,666,653	29.92
Taxes	2,100,000	1,471,680	70.08	628,320	29.92
Hire of Equipment, Cr. Bal.....Cr.	330,775	Cr. 274,352	....	Cr. 56,423	29.92
Joint Facility and Miscellaneous.....	.....	.....	....	.....	....
Rent Balance	190,553	Cr. 133,540	70.08	Cr. 57,013	29.92
Total Costs	27,200,081	19,018,544	69.92	8,181,537	30.08
Assessor's Valuation .....	.....	.....	....	.....	....
Book Cost of Road and Equipment	185,056,832	129,391,750	....	55,665,082	....
Gross Transportation Revenues	39,819,284	29,061,705	....	10,757,579	....
Amount by which transportation revenue exceeds total cost	12,619,203	10,043,169	....	2,576,042	....
Rate at which this excess of revenue over cost will pay return on the book cost of road and equipment	6.82%	7.76%	....	4.63%	....

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Whole Line, Year Ended June 30, 1914.

Maintenance of Way and Structures.

	Total.	Freight.	%	Passenger.	%
1 Superintendence	\$201,756	\$124,605	61.76	\$77,151	38.24
2 Ballast	157,071	97,007	61.76	60,064	38.24
3 Ties	791,285	488,698	61.76	302,587	38.24
4 Rails	347,981	214,913	61.76	133,068	38.24
5 Other Track Material	654,714	404,351	61.76	250,363	38.24
6 Roadway and Track	1,433,323	885,220	61.76	548,103	38.24
7 Removal Snow, Sand, Ice	114,853	70,933	61.76	43,920	38.24
8 Tunnels	10,043	6,203	61.76	3,840	38.24
9 Bridges, Trestles and Culverts	221,427	136,753	61.76	84,674	38.24
10 Over and Undergrade Crossings	45,236	27,938	61.76	17,298	38.24
11 Grade Crossings, Fences, etc.	120,139	74,198	61.76	45,941	38.24
12 Snow and Sand Fences and Sheds .....	.....	.....	.....	.....	.....
13 Signals and Interlockers	329,812	203,692	61.76	126,120	38.24
14 Telegraph and Telephone	53,925	33,304	61.76	20,621	38.24
15 Electric Power Transmission .....	.....	.....	.....	.....	.....
16 Buildings, Fixtures and Grounds	619,553	382,636	61.76	236,917	38.24
17 Docks and Wharves	49,628	30,650	61.76	18,978	38.24
18 Roadway Tools and Supplies	70,378	43,466	61.76	26,912	38.24
19 Injuries to Persons	27,237	16,822	61.76	10,415	38.24
20 Stationery and Printing	14,319	8,843	61.76	5,476	38.24
21 Other Expenses	253	156	61.76	97	38.24
22-23. Maintenance Joint Tr. Yds. and Fac.....	.....	.....	.....	.....	.....
Balance	Cr. 49,148	Cr. 30,354	61.76	Cr. 18,794	38.24
Total	5,213,785	3,220,084	61.76	1,993,751	38.24

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Whole Line, Year Ended June 30, 1914.

Maintenance of Equipment.

		Total.	Freight.	%	Passenger.	%
24	Superintendence	\$125,678	\$97,036	77.21	\$28,642	22.79
25	Steam Locomotives—Repairs	1,910,597	1,345,060	70.40	565,537	29.60
26	Steam Locomotives—Renewals	13,515	9,515	70.40	4,000	29.60
27	Steam Locomotives—Depreciation	421,399	296,665	70.40	124,734	29.60
31	Passenger Train Cars—Repairs	487,908	.....	....	487,908	....
32	Passenger Train Cars—Renewals	Cr. 630	.....	....	Cr. 630	....
33	Passenger Train Cars—Depreciation	111,640	.....	....	111,640	....
34	Freight Train Cars—Repairs	1,759,662	1,759,662	....	.....	....
35	Freight Train Cars—Renewals	140,905	140,905	....	.....	....
36	Freight Train Cars—Depreciation	893,468	893,468	....	.....	....
43	Work Equipment—Repairs	30,447	18,804	61.76	11,643	38.24
44	Work Equipment—Renewals	5,159	3,186	61.76	1,973	38.24
45	Work Equipment—Depreciation	23,539	14,538	61.76	9,001	38.24
46	Shop Machinery and Tools	197,731	147,448	74.57	50,283	25.43
47	.....	.....	.....	....	.....	....
48	Injuries to Persons	24,865	19,198	77.21	5,667	22.79
49	Stationery and Printing	14,696	11,347	77.21	3,349	22.79
50	Other Expenses	8,339	6,439	77.21	1,900	22.79
51	Maintenance Joint Equipment—Dr. ....	.....	.....	....	.....	....
52	Maintenance Joint Equipment—Cr. ....	.....	.....	....	.....	....
	Total	\$6,168,918	\$4,763,271	77.21	\$1,405,647	22.79

Mountain Ice Co. vs. D., L. & W. R. R. Co.

Mountain Ice Co. vs. D., L. & W. R. R. Co.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Whole Line, Year Ended June 30, 1914.

Traffic Expenses.

	Total.	Freight.	%	Passenger.	%
53 Superintendence	\$221,760	\$137,425	61.97	\$84,335	38.03
54 Outside Agencies	263,323	197,413	74.97	65,910	25.03
55 Advertising	137,353	.....	....	137,353	....
56 Traffic Associations	45,223	33,904	74.97	11,319	25.03
57 Fast Freight Lines	110,951	110,951	....	.....	....
58 Indust. and Imm. Bureaus	21,569	16,170	74.97	5,399	25.03
59 Stationery and Printing	77,521	48,040	61.97	29,481	38.03
60 Other Expenses	1,196	741	61.97	455	38.03
Total	\$878,896	\$544,644	61.97	\$334,252	38.03

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Whole Line, Year Ended June 30, 1914.

Transportation Expenses.

	<i>Total.</i>	<i>Freight.</i>	<i>%</i>	<i>Passenger.</i>	<i>%</i>
61 Superintendence	\$266,486	\$195,681	73.43	\$70,805	26.57
62 Dispatching Trains	129,509	65,001	50.19	64,508	49.81
63 Station Employees	1,945,439	1,479,117	76.03	466,322	23.97
64 Weighing and Car Service	11,958	11,958	....	.....	....
65 Coal and Ore Docks .....	.....	.....	....	.....	....
66 Station Supplies,	143,423	109,045	76.03	34,378	23.97
67 Yardmasters and Clerks	315,962	300,164	95.00	15,798	5.00
68 Yard Conductors	783,468	744,295	95.00	39,173	5.00
69 Yard Switchmen	36,854	35,011	95.00	1,843	5.00
70 Yard Supplies	22,320	21,204	95.00	1,116	5.00
71 Yard Enginemen	487,449	463,077	95.00	24,372	5.00
72 Engine House Expenses—Yard	138,582	131,653	95.00	6,929	5.00
73 Fuel—Yard Locomotives	389,285	369,821	95.00	19,464	5.00
74 Water—Yard Locomotives	17,399	16,529	95.00	870	5.00
75 Lubricants—Yard Locomotives	5,624	5,343	95.00	281	5.00
76 Supplies—Yard Locomotives	9,972	9,473	95.00	499	5.00
77 Opr. Jt. Yds.—Dr.	4,687	4,453	95.00	234	5.00
78 Opr. Jt. Yds.—Cr. ....	.....	.....	....	.....	....
79 Motormen .....	.....	.....	....	.....	....
80 Road Enginemen	1,483,905	999,558	67.36	484,347	32.64
81 Engine House Expenses	474,113	280,248	59.11	193,865	40.89
82 Fuel—Road Locomotives	2,392,664	1,694,485	70.82	698,179	29.18

Mountain Ice Co. vs. D., L. & W. R. R. Co.

Mountain Ice Co. vs. D., L. & W. R. R. Co.

83	Water—Road Locomotives	136,996	97,021	70.82	89,975	29.18
84	Lubricants—Road Locomotives	45,729	27,991	61.21	17,738	38.79
85	Supplies—Road Locomotives	38,049	20,738	62.75	12,311	37.25
86	Operating Power Plants .....	.....	.....	....	.....	....
87	Purchased Power .....	.....	.....	....	.....	....
88	Trainmen	1,510,459	998,715	66.12	511,744	33.88
89	Train Supplies	508,594	247,431	48.65	261,163	51.35
90	Interlockers R. T. M. Ex. Sw.	236,071	118,484	50.19	117,587	49.81

Mountain Ice Co. vs. D., L. & W. R. R. Co.

Transportation Expenses—Continued.

	Total.	%	Freight.	Passenger.	%
91 Xing Flagmen, R. T. M., Inc. Sw.	\$186,720	\$115,318	61.76	\$71,402	38.24
92 Drawbridge Op., R. T. M., Inc. Sw.	18,474	11,410	61.76	7,064	38.24
93 Wrecks, R. T. M., Inc. Sw.	27,731	17,127	61.76	10,604	38.24
94 Telegraph Op., R. T. M., Inc. Sw.	73,781	45,567	61.76	28,214	38.24
95 Floating Equipment .....	.....	.....	....	.....	....
96 Express Service .....	.....	.....	....	.....	....
97 Stationery, O. H.	119,408	87,681	73.43	31,727	26.57
98 Other Expenses, O. H.	18,989	13,944	73.43	5,045	26.57
99 Loss and Damage, Freight	329,413	329,413	....	.....	....
100 Loss and Damage, Baggage	1,161	.....	....	1,161	....
101 Damage to Property, R. T. M. Inc.	32,965	20,359	61.76	12,606	38.24
102 Damage to Stock, R. T. M. Exc.	4,600	2,309	50.19	2,291	49.81
103 Injuries to Persons, R. T. M. Inc.	227,451	140,474	61.76	86,977	38.24
104 Op. Jt. Tracks—Dr., } O. H.	Cr. 60,789	Cr. 44,637	73.43	Cr. 16,152	26.57
105 Op. Jt. Tracks—Cr., }					
Total	\$12,509,901	9,185,461	73.43	3,324,440	26.57

Mountain Ice Co. vs. D., L. & W. R. R. Co.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Whole Line, Year Ended June 30, 1914.

General Expenses.

	Total.	Freight.	%	Passenger.	%
106 Salaries General Officers	\$144,806	\$103,551	71.51	\$41,255	28.49
107 Salaries Clerks	350,849	250,885	71.51	99,954	28.49
108 General Office Supplies and Expenses	58,917	42,132	71.51	16,785	28.49
109 Law Expenses	129,676	92,731	71.51	36,945	28.49
110 Insurance	3,756	2,686	71.51	1,070	28.49
111 Relief Department Expenses .....	.....	.....	....	.....	....
112 Pensions	89,905	64,291	71.51	25,614	28.49
113 Stationery and Printing	43,360	31,007	71.51	12,353	28.49
113½ Valuation Expenses	14,233	10,178	71.51	4,055	28.49
114 Other Expenses	24,432	17,471	71.51	6,961	28.49
115 Gen. Adm. Jt. Trks. Yds.—Dr. ....	.....	.....	....	.....	....
116 Gen. Adm. Jt. Trks. Yds.—Cr.	Cr. 10,015	Cr. 7,162	71.51	Cr. 2,853	28.49
Total	\$849,909	\$607,770	71.51	\$242,139	28.49

Mountain Ice Co. vs. D., L. & W. R. R. Co.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Whole Line, Year Ended June 30, 1914.

Item.	Total		Movement.		Terminal.		Extra L. C. L.
	Freight.	Amount.	Amount.	%	Amount.	%	
Maintenance of Way and Structures	\$3,220,034	\$2,442,718	75.86		\$777,316	24.14	Track Mile Basis
Maintenance of Equipment	4,763,271	2,630,278	55.22		2,132,993	44.78	
Traffic	544,644	322,266	59.17		222,378	40.83	O. H.
Transportation (Excl. Loss and Damage..	8,856,048	4,890,442	55.22		3,965,606	44.78	
General Expenses	607,770	359,618	59.17		248,152	40.83	
Total Excl. Loss and Damage	\$17,991,767	\$10,645,322	59.17		\$7,346,445	40.83	
Adjustment Pass. Part of Frt. Exp.	Cr. 366,424	Cr. 216,813	59.17		Cr. 149,611	40.83	
Net Freight Operating Expenses	17,625,343	10,428,509	59.17		7,196,834	40.83	
Terminal as Re-Classification (925,370 cars							
@ \$0.87) .....	.....	805,072	.....		Cr. 805,072	.....
Corrected Movement—Terminal Expenses	17,625,343	11,233,581	63.74		6,391,762	36.26	
Special L. C. L. Expenses @ \$1.00 per ton	.....	.....	.....		Cr. 1,475,766	.....	\$1,475,766
Operating Expenses for Unit Costs (Excl.							
Loss and Damage	17,625,343	11,233,581	63.74		4,915,996	27.89	1,475,766 8.37
Taxes	1,471,680	938,049	63.74		410,452	27.89	123,179 8.37
Hire of Equipment (Credit Balance)	274,352	Cr. 174,872	63.74		Cr. 76,517	27.89	Cr. 22,963 8.37
Jt. Facilities and Misl. Rents—Cr.....	133,540	Cr. 85,118	63.74		Cr. 37,245	27.89	Cr. 11,177 8.37
Total Costs	18,689,131	11,911,640	63.74		5,212,686	27.89	1,564,805 8.37
							(WHM)
Book Cost of Road and Equipment..	\$129,391,750	\$82,474,301	.....		\$36,087,359	.....	\$10,830,090 ...

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Whole Line, Year Ended June 30, 1914.

Mountain Ice Co. vs. D., L. & W. R. R. Co.

	Account.	Total Freight.	Movement. Amount.	%	Terminal. Amount.	%
61	Superintendence	\$195,681	\$108,055	55.22	\$87,626	44.78
62	Dispatching	65,001	65,001	....	.....	....
63	Station Employees	1,479,117	.....	....	1,479,117	....
64	Weighing	11,958	.....	....	11,958	....
65	Coal and Ore .....	.....	.....	....	.....	....
66	Station Supplies	109,045	.....	....	109,045	....
67	Yardmasters	300,164	.....	....	300,164	....
68	Yard Conductors	744,295	.....	....	744,295	....
69	Yard Switchmen	35,011	.....	....	35,011	....
70	Yard Supplies	21,204	.....	....	21,204	....
71	Yard Enginemen	463,077	.....	....	463,077	....
72	Engine House Exp.—Yard	131,653	.....	....	131,653	....
73	Fuel—Yard Locomotives	369,821	.....	....	369,821	....
74	Water—Yard Locomotives	16,529	.....	....	16,529	....
75	Lubricants—Yard Locomotives	5,343	.....	....	5,343	....
76	Supplies—Yard Locomotives	9,473	.....	....	9,473	....
77	Opr. Jt. Yds.—Dr.	4,453	.....	....	4,453	....
78	Opr. Jt. Yds.—Cr. ....	.....	.....	....	.....	....
79	Motormen .....	.....	.....	....	.....	....
80	Road Enginemen	999,558	999,558	....	.....	....
81	Engine House Expenses	280,248	280,248	....	.....	....
82	Fuel—Road Locomotives	1,694,485	1,694,485	....	.....	....
83	Water—Road Locomotives	97,021	97,021	....	.....	....
84	Lubricants—Road Locomotives	27,991	27,991	....	.....	....

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Mountain Ice Co. vs. D., L. & W. R. R. Co.

	Account.	Total Freight.		Movement.		Terminal.	
		Amount.	%	Amount.	%	Amount.	%
85	Supplies—Road Locomotives	20,738	...	20,738	...	...	...
86	Operating Power Plants .....	...	...	...	...	...	...
87	Purchased Power .....	...	...	...	...	...	...
88	Trainmen	998,715	...	998,715	...	...	...
89	Train Supplies	247,431	...	247,431	...	...	...
90	Interlockers	118,484	...	118,484	...	...	...
91	Crossing Flagmen	\$115,318	55.22	\$63,679	55.22	\$51,639	44.78
92	Drawbridge Op.	11,410	...	11,410	...	...	...
93	Wrecks	17,127	55.22	9,458	55.22	7,669	44.78
94	Telegraph Op.	45,567	...	45,567	...	...	...
95	Floating Equipment .....	...	...	...	...	...	...
96	Express Service .....	...	...	...	...	...	...
97	Stationery	87,681	...	48,417	55.22	39,264	44.78
98	Other Expenses	13,944	55.22	7,700	55.22	6,244	44.78
99	Loss and Damage (329, 413) .....	...	...	...	...	...	...
100	.....	...	...	...	...	...	...
101	Damage to Property	20,359	55.22	11,242	55.22	9,117	44.78
102	Damage to Stock	2,309	...	2,309	...	...	...
103	Injuries	140,474	55.22	77,570	55.22	62,904	44.78
104	Op. Jt. Tracks—Dr. ....	...	...	...	...	...	...
105	Op. Jt. Tracks—Cr.	Cr. 44,637	...	Cr. 44,637	...	...	...
	Total	\$88,856,048	55.22	\$4,890,442	55.22	\$3,965,606	44.78

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

State of New Jersey, Year Ended June 30, 1914.

Operating Revenues, Gross Earnings Basis.

	Total.	Freight.	%	Passenger.	%	Basis.
1 Freight	\$5,372,131	\$5,372,131	....	.....	....	....
2 Passenger	4,446,006	.....	....	\$4,446,006	....	....
3 Excess Baggage	9,097	.....	....	9,097	....	....
4 Parlor and Chair	12,296	.....	....	12,296	....	....
5 Mail	46,702	.....	....	46,702	....	....
6 Express	255,417	.....	....	255,417	....	....
7 Milk (on Passenger Trains)	419,443	.....	....	419,443	....	....
8 Other Passenger Trains	3,167	.....	....	3,167	....	....
9 Switching	7,935	7,838	95.00	397	5.00	....
10 Special Service	3,225	3,225	....	.....	....	....
11 Miscellaneous	6,498	3,498	51.10	3,178	48.90	O. H.
12 Station and Train Privileges	27,518	.....	....	27,518	....	....
13 Parcel Room Receipts	9,354	.....	....	9,354	....	....
14 Storage Freight	22,016	22,016	....	.....	....	....
15 Storage Baggage	4,666	.....	....	4,666	....	....
16 Car Service	65,437	65,437	....	.....	....	....
17 Telegraph and Telephone	5,159	2,686	51.10	2,523	48.90	O. H.
18 Rents Buildings	1,486	759	51.10	727	48.90	O. H.
19 Miscellaneous Rents	3,945	2,016	51.10	1,929	48.90	O. H.
20 Joint Facility Revenue—Dr. ....	.....	.....	....	.....	....	....
21 Joint Facility Revenue—Cr. ....	.....	.....	....	.....	....	....
Total Operating Revenues	\$10,721,498	\$5,479,078	51.10	\$5,242,420	48.90	....
Total, Excluding Mail and Express...	\$10,419,379	\$5,479,078	52.59	\$4,940,301	47.41	....

Mountain Ice Co. vs. D., L. & W. R. R. Co.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

State of New Jersey, Year Ended June 30, 1914.

	Total.	Freight.	%	Passenger.	%
Maintenance of Way and Structures	\$1,758,728	\$809,191	46.01	\$949,537	53.99
Maintenance of Equipment	1,493,110	873,619	58.51	619,491	41.49
Traffic	250,800	110,801	44.18	139,999	55.82
Transportation	4,120,021	2,152,280	52.24	1,967,741	47.76
General Expenses	247,248	128,000	51.77	119,248	48.23
Total	\$7,869,907	\$4,073,891	51.77	\$3,796,016	48.23
Adjustment 2% Freight Op. Exp. to Passenger .....	.....	Cr. 81,478	....	81,478	....
Adjusted Operating Expenses	7,869,907	3,992,413	50.73	3,877,494	49.27
Taxes (1)	1,051,556	533,454	50.73	518,102	49.27
Hire of Equipment—Balance	Cr. 67,426	Cr. 43,542	....	Cr. 23,884	....
Joint Facilities and Miscellaneous—Rents	Cr. 25,997	Cr. 13,188	50.73	Cr. 12,809	49.27
Total Costs	\$8,828,040	\$4,469,137	50.62	\$4,358,903	49.38
(1) On Page 81, Ann. Rep. D., L. & W. to Board Pub. Util. Comm., New Jersey, taxes are given as \$1,022,- 322.92. In addition there is a U. S. Internal Revenue Tax of \$137,245.60. On the track-miles-operated basis, New Jersey gets (see page 111 same report) 204.40—21.30% of this tax.....\$ 29,233.31	959.81			1,022,322.92	
					\$1,051,556.23

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.
1914—New Jersey.

Maintenance of Way and Structures.

	Total.	Freight.	%	Passenger.	%
1 Superintendence	\$58,793	\$27,051	46.01	\$31,742	53.99
2 Ballast	17,180	7,905	46.01	9,275	53.99
3 Ties	211,330	97,233	46.01	114,097	53.99
4 Rails	132,996	61,191	46.01	71,805	53.99
5 Other Track Material	174,794	80,423	46.01	94,371	53.99
6 Roadway and Track	429,546	197,634	46.01	231,912	53.99
7 Snow and Sand	37,104	17,072	46.01	20,032	53.99
8 Tunnels	7,619	3,505	46.01	4,114	53.99
9 Bridges, Trestles and Culverts	47,294	21,760	46.01	25,534	53.99
10 Over and Under Crossings	30,288	13,935	46.01	16,353	53.99
11 Grade Crossings and Fences	49,969	22,991	46.01	26,978	53.99
12 Snow and Sand Fences .....	.....	.....	....	.....	....
13 Signals and Interlockers	177,366	81,606	46.01	95,760	53.99
14 Telegraph and Telephone	22,962	10,565	46.01	12,397	53.99
15 Electric Power Transmission .....	.....	.....	....	.....	....
16 Buildings, Fixtures and Grounds	275,891	126,937	46.01	148,954	53.99
17 Docks and Wharves	46,503	21,396	46.01	25,107	53.99
18 Roadway Tools and Supplies	25,531	11,747	46.01	13,784	53.99
19 Injuries to Persons	10,645	4,898	46.01	5,747	53.99
20 Stationery and Printing	4,186	1,926	46.01	2,260	53.99
21 Other Expenses	26	12	46.01	14	53.99
22 Maint. Jt. Tracks, tec.—Dr.	790	363	46.01	427	53.99
23 Maint. Jt. Tracks, etc.—Cr.	Cr. 2,085	Cr. 959	46.01	Cr. 1,126	53.99
Total	\$1,758,728	\$809,191	46.01	\$949,537	53.99

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

1914—New Jersey.

Maintenance of Equipment.

	Total.	Freight.	%	Passenger.	%
24 Superintendence	\$36,539	\$21,379	58.51	\$15,160	41.49
25 Steam Locomotives—Repairs	541,016	295,287	54.58	245,729	45.42
26 Steam Locomotives—Renewals	3,769	2,057	54.58	1,712	45.42
27 Steam Locomotives—Depreciation	117,718	64,250	54.58	53,468	45.42
31 Passenger Cars—Repairs	222,812	.....	....	222,812	....
32 Passenger Cars—Renewals	Cr. 267	.....	....	Cr. 267	....
33 Passenger Cars—Depreciation	47,145	.....	....	47,145	....
34 Freight Cars—Repairs	281,646	281,646	....	.....	....
35 Freight Cars—Renewals	23,149	23,149	....	.....	....
36 Freight Cars—Depreciation	146,144	146,144	....	.....	....
43 Work Equipment—Repairs	6,691	3,079	46.01	3,612	53.99
44 Work Equipment—Renewals	1,081	497,	46.01	584	53.99
45 Work Equipment—Depreciation	5,129	2,360	46.01	2,769	53.99
46 Shop Machinery and Tools	48,767	26,885	55.13	21,882	44.87
47 .....	.....	.....	....	.....	....
48 Injuries to Persons	5,135	3,004	58.51	2,131	41.49
49 Stationery and Printing	4,116	2,408	58.51	1,708	41.49
50 Other Expenses	2,520	1,474	58.51	1,046	41.49
51 Maint. Joint Equipment—Dr. ....	.....	.....	....	.....	....
52 Maint. Joint Equipment—Cr. ....	.....	.....	....	.....	....
Total	\$1,493,110	\$873,619	58.51	\$619,491	41.49

DELAWARE. LACKAWANNA & WESTERN RAILROAD COMPANY.

1914—New Jersey.

Traffic Expenses.

	Total.	Freight.	%	Passenger.	%
53 Superintendence	\$64,806	\$28,631	44.18	\$36,175	55.82
54 Outside Agencies	87,117	45,815	52.59	41,302	47.47
55 Advertising	40,371	.....	....	40,371	100.00
56 Traffic Associations	13,125	6,902	52.59	6,223	47.41
57 Fast Freight Lines	15,894	15,894	100.00	.....	....
58 Indust. and Imp. Bureaus	6,324	3,326	52.59	2,998	47.41
59 Stationery and Printing	22,814	10,079	44.18	12,735	55.82
60 Other Expenses	349	154	44.18	195	55.82
Total	\$250,800	\$110,801	44.18	\$139,999	55.82

Mountain Ice Co. vs. D., L. & W. R. R. Co.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

1914—New Jersey.

Transportation Expenses.

	Total.	Freight.	%	Passenger.	%
61 Superintendence	\$78,787	\$41,158	52.24	\$37,629	47.76
62 Dispatching	63,608	17,518	27.54	46,090	72.46
63 Station Employees	948,653	405,454	42.74	543,199	57.26
64 Weighing	2,490	2,490	....	.....	....
65 Coal and Ore .....	.....	.....	....	.....	....
66 Station Supplies	75,469	32,255	42.74	43,214	57.26
67 Yard Masters	89,905	85,410	95.00	4,495	5.00
68 Yard Conductors	250,645	238,113	95.00	12,532	5.00
69 Yard Switchmen	17,579	16,700	95.00	879	5.00
70 Yard Supplies	5,559	5,281	95.00	278	5.00
71 Yard Enginemen	144,176	136,967	95.00	7,209	5.00
72 Engine House Expenses—Yard	37,540	35,663	95.00	1,877	5.00
73 Fuel—Yard Locomotives	89,680	85,196	95.00	4,484	5.00
74 Water—Yard Locomotives	4,823	4,582	95.00	241	5.00
75 Lubricants—Yard Locomotives	1,876	1,782	95.00	94	5.00
76 Supplies—Yard Locomotives	1,825	1,734	95.00	91	5.00
77 Opr. Jt. Yds.—Dr.	257	244	95.00	13	5.00
78 Opr. Jt. Yds.—Cr. ....	.....	.....	....	.....	....
79 Motormen .....	.....	.....	....	.....	....
80 Road Enginemen	408,404	180,229	44.13	228,175	55.87
81 Engine House Expenses	150,814	53,720	35.62	97,094	64.38
82 Fuel—Road Locomotives	636,049	306,385	48.17	329,664	51.83
83 Water—Road Locomotives	43,044	20,734	48.17	22,310	51.83
84 Lubricants—Road Locomotives	12,980	4,888	37.66	8,092	62.34

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Mountain Ice Co. vs. D., L. & W. R. R. Co.

	Total.	Freight.	%	Passenger.	%
85 Supplies—Road Locomotives	9,000	3,528	39.20	5,472	60.80
86 Operating Power Plants .....	.....	.....	.....	.....	.....
87 Purchased Power .....	.....	.....	.....	.....	.....
88 Trainmen	476,649	202,147	42.41	274,502	57.59
89 Train Supplies	133,805	35,231	26.33	98,574	73.67
90 Interlockers, RTM Enc. Sw.	95,655	26,343	27.54	69,312	72.46
91 Crossing Flagmen RTM., Inc. Sw.	\$95,142	\$43,775	46.01	\$51,367	53.99
92 Drawbridge Op., Inc. Sw.	16,393	7,542	46.01	8,851	53.99
93 Wrecks, Inc. Sw.	9,943	4,575	46.01	5,368	53.99
94 Telegraph Op., Inc. Sw.	20,326	9,352	46.01	10,974	53.99
95 Floating Equipment, .....	.....	.....	.....	.....	.....
96 Express Service .....	.....	.....	.....	.....	.....
97 Stationery O. H.,	41,191	21,518	52.24	19,673	47.76
98 Other Expenses, O. H.	4,804	2,510	52.24	2,294	47.76
99 Loss and Damage—Freight	93,050	93,050	.....	.....	.....
100 Loss and Damage—Baggage	491	.....	.....	491	.....
101 Damage to Property, RTM, Inc. Sw.	5,786	2,662	46.01	3,124	53.99
102 Damage to Stock RTM, Exc. Sw.	802	221	27.54	581	72.46
103 Injuries to Persons, RTM, Inc. Sw.	68,558	31,544	46.01	37,014	53.99
104 Op. Jt. Tracks—Dr. ....	.....	.....	.....	.....	.....
105 Op. Jt. Tracks—Cr.	Cr. 15,737	Cr. 8,221	52.24	Cr. 7,516	47.76
Total	\$4,120,021	\$2,152,280	52.24	\$1,967,741	47.76

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

1914—New Jersey.

General Expenses.

	Total.	Freight.	%	Passenger.	%
106 Salaries and Expenses, General Officers	\$42,312	\$21,905	51.77	\$20,407	48.23
107 Salaries and Expenses, Clerks, etc.	99,875	51,705	51.77	48,170	48.23
108 Office Supplies	17,429	9,028	51.77	8,406	48.23
109 Law Expenses	28,957	14,991	51.77	13,966	48.23
110 Insurance	837	433	51.77	404	48.23
111 Relief Department .....	.....	.....	.....	.....	.....
112 Pensions	36,062	18,669	51.77	17,393	48.23
113 Stationery and Printing	12,759	6,605	51.77	6,154	48.23
113½ Valuation Expenses	1,404	727	51.77	677	48.23
114 Other Expenses	7,907	4,094	51.77	3,813	48.23
115 Gen. Ad. Jt. Tracks and Yards—Dr. ....	.....	.....	.....	.....	.....
116 Gen. Ad. Jt. Tracks and Yards—Cr.	Cr. 294	Cr. 152	51.77	Cr. 142	48.23
Total	\$247,248	\$128,000	51.77	\$119,248	48.23

Mountain Ice Co. vs. D., L. & W. R. R. Co.

DELAWARE LACKAWANNA & WESTERN RAILROAD COMPANY.

1914—New Jersey.

Movement—Terminal Separation.

Item.	Total		Movement.		Terminal.		Extra L. C. L.	
	Freight.	Amount.	Amount.	%	Amount.	%	Amount.	Track Miles
Maintenance of Way and Structures.....	\$809,191	\$578,652	71.51	\$230,539	28.49			
Maintenance of Equipment	873,619	392,866	44.97	480,753	55.03			
Traffic	110,801	56,187	50.71	54,614	49.29			
Transportation (Excl. Loss and Damage) ..	2,059,230	926,957	44.97	1,113,173	55.03			
General Expenses	128,000	64,909	50.71	63,091	49.29			
Total Excl. Loss and Damage	3,980,841	2,018,671	50.71	1,962,170	49.29			
Adjustment Pass., Part of Frt. Exp.....	Cr. 81,478	Cr. 41,317	50.71	Cr. 40,161	49.29			
Net Freight Operating Expenses	3,899,363	1,977,354	50.71	1,922,009	49.29			
Terminal as Re-Classification, 419,158 cars, @ \$0.87		364,667	....	Cr. 364,667	....		
Corrected Movement—Terminal Expenses..	3,899,363	2,342,021	60.06	1,557,342	39.94			
Special L. C. L. Expenses .....		....	....	Cr. 384,833	....	884,833		
Operating Expenses for Unit Costs (Excl. Loss and Damage)	3,899,363	2,342,021	60.06	1,172,509	30.07	384,833	9.87	
Taxes	533,454	320,392	60.06	160,410	30.07	52,652	9.87	
Hire of Equipment, Balance	Cr. 43,542	Cr. 26,151	60.06	Cr. 13,093	30.07	Cr. 4,298	9.87	
Jt. Facilities and Misc. Rents—Balance	Cr. 13,188	Cr. 7,921	60.06	Cr. 3,966	30.07	Cr. 1,301	9.87	
Total Costs	\$4,376,087	2,628,241	60.06	1,315,860	30.07	481,886	9.87	

Mountain Ice Co. vs. D., L. & W. R. R. Co.				
DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.				
1914—New Jersey.				
	Account.	Total Freight.	Movement. Amount. %	Terminal. Amount. %
61	Superintendence	\$41,158	\$18,509 44.97	\$22,649 55.03
62	Dispatching	17,518	17,518	
63	Station Employees	405,454		405,454
64	Weighing	2,490		2,490
65	Coal and Ore			
66	Station Supplies	32,255		32,255
67	Yard Master	85,410		85,410
68	Yard Conductor	238,113		238,113
69	Yard Switchman	16,700		16,700
70	Yard Supplies	5,281		5,281
71	Yard Enginemen	136,967		136,967
72	Engine House Expenses—Yard	35,663		35,663
73	Fuel—Yard Locomotives	85,196		85,196
74	Water—Yard Locomotives	4,582		4,582
75	Lubricants—Yard Locomotives	1,782		1,782
76	Supplies—Yard Locomotives	1,734		1,734
77	Opr. Jt. Yds.—Dr.	244		244
78	Opr. Jt. Yds.—Cr.			
79	Motormen			
80	Road Enginemen	180,229	180,229	
81	Engine House Expenses	53,720	53,720	
82	Fuel—Road Locomotives	306,385	306,385	
83	Water—Road Locomotives	20,734	20,734	
84	Lubricants—Road Locomotives	4,888	4,888	
85	Supplies—Road Locomotives	3,528	3,528	

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

Mountain Ice Co. vs. D., L. & W. R. R. Co.

	Account.	Total Freight.		Movement.		Terminal.	
		Amount.	%	Amount.	%	Amount.	%
86	Operating Power Plants	.....	.....	.....	.....	.....	.....
87	Purchased Power	.....	.....	.....	.....	.....	.....
88	Trainmen	202,147	.....	202,147	.....	.....	.....
89	Train Supplies	35,231	.....	35,231	.....	.....	.....
90	Interlockers	26,343	.....	26,343	.....	.....	.....
91	Crossing Flagmen	43,775	.....	19,686	44.97	24,089	55.03
92	Drawbridge Op.	\$7,542	.....	\$7,542	.....	.....	.....
93	Wrecks	4,575	.....	2,057	44.97	\$2,518	55.03
94	Telegraph Op.	9,352	.....	9,352	.....	.....	.....
95	Floating Equipment	.....	.....	.....	.....	.....	.....
96	Express Service	.....	.....	.....	.....	.....	.....
97	Stationery	21,518	.....	9,677	44.97	11,841	55.03
98	Other Expenses	2,510	.....	1,129	44.97	1,381	55.03
99	Loss and Damage (93,050)	.....	.....	.....	.....	.....	.....
100	.....	.....	.....	.....	.....	.....	.....
101	Damage to Property	2,662	.....	1,197	44.97	1,465	55.03
102	Damage to Stock	221	.....	221	.....	.....	.....
103	Injuries	31,544	.....	14,185	44.97	17,359	55.03
104	Op. Jt. Tracks—Dr.	.....	.....	.....	.....	.....	.....
105	Op. Jt. Tracks—Cr.	Cr. 8,221	.....	Cr. 8,221	.....	.....	.....
	Total	\$2,059,230	.....	926,057	44.97	\$1,133,173	55.03

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

No. 318.

WHIPPANY SAND COMPANY AND MORRIS SAND COMPANY

vs.

**DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
AND MORRISTOWN AND ERIE RAILROAD COMPANY.**

The Board concludes that the present rates on sand from Whippany to consuming points on the Delaware, Lackawanna & Western Railroad are not unjustly discriminatory nor unreasonable per se.

Borden D. Whiting, for petitioners.

John L. Seager, for the Delaware, Lackawanna and Western Railroad Company.

Pitney, Hardin & Skinner, for Morristown and Erie Railroad Company.

Complaint was made by Whippany Sand Company and Morris Sand Company that the rates of the Delaware, Lackawanna and Western Railroad Company applicable to the transportation of sand from Whippany, a station on the Morristown and Erie Railroad near Morristown, to consuming points on the Lackawanna Railroad are unreasonable and unjustly discriminatory. The rates, in effect when the complaint was filed, are shown on "Schedule A" attached hereto. After the filing of the complaint and answer, these rates were advanced five per cent, as were all other rates on sand.

Respondents deny that the discrimination is unreasonable and affirm that the rates per se are abnormally low. The Morristown and Erie Railroad Company at the hearing asked for a reduction in the through rate, provided the

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

proportion of the rate which the Morristown and Erie Railroad Company takes is not lowered.

No study of costs was presented by the complainants, nor was any evidence adduced by them to show the unreasonableness of the rates per se. The complainants did not offer any comparison of rates on like commodities for like distances to support their contentions other than a statement from the tariffs then in effect and reference to tariffs filed with the Interstate Commerce Commission since this complaint was filed with this Board, and following out the general five per cent advance on all rates subsequent to an order of the Interstate Commerce Commission dated December 16, 1914. (I. & S. Docket 333).

The Delaware, Lackawanna and Western Railroad Company produced A. S. Learoyd to testify to the low level of the rates, and filed a set of exhibits showing the present rates to various destinations together with the distances moved and the quantity of sand moved from each of three points to the several destinations under the rates in question. The three points were (1) Whippany, on the Morristown and Erie, the location of the sand pits of the complainants, (2) Netcong, and (3) Succasunna (including Kenvil) on the Delaware, Lackawanna and Western, the location of competitors of the Whippany Sand Company.

An analysis of the rates for the purpose of studying discrimination was made. The market is, to a certain extent, divided between the three producing points. Whippany has an advantage over the other two producing points of five cents a ton in the freight rate to Newark, and Whippany and Succasunna have an advantage of five cents a ton over Netcong to Montclair and Bloomfield. Whippany has an advantage of from five to ten cents a ton to destinations on the Passaic and Delaware Branch. Whippany is at a disadvantage of from five to ten cents a ton to destinations

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

between Summit and Denville, but local pits at Chatham and at Morris Plains make these disadvantages more apparent than real. Paterson and Passaic are on the same level of rates for all three points (except that at Passaic Netcong pays five cents a ton more than Succasunna or Whippany). All points on the Sussex Railroad have cheaper rates from Netcong, while points between Netcong and Phillipsburg are divided between Netcong and Succasunna to the exclusion of Whippany. In view of this distribution of the territory, before passing upon the question of discrimination all the shippers of sand, including Succasunna and Netcong interests should be represented at the hearing and have the right to be heard. We will, therefore, not pass upon that question. The fact that a two-line haul is involved is justification for a higher charge of ten cents a ton. (*Maricopa County Commercial Club vs. S. P. Ry. Co.*, 22 I. C. C. 429; *Ontario Iron Co. vs. N. Y. C. & H. R. R. Co.*, 21 I. C. C. 204; *Weatherford Chamber of Commerce vs. M. K. & T. Ry. Co.*, 31 I. C. C. 665; and *Meridian Fertilizer Factory vs. A. & S. Ry. Co.*, 33 I. C. C. 160.) The Delaware, Lackawanna and Western proportion of these rates is the same from Whippany to Morris Plains (for example) as the whole rate from Netcong to Morris Plains. There is a local pit at Morris Plains.

The cost of the service is material in this case. From Exhibit R-1 we have computed the approximate average car haul of sand as thirty-five miles. The ton haul is not far from the same figure. Short line mileage has been used in all cases. In Exhibit R-5 the Delaware, Lackawanna and Western Railroad Company purported to show part of the expenses of handling a car through the Harrison and Orange street yards together with small charges for clerical work and equipment. A copy of this Exhibit is attached hereto. A cost of \$5.035 per car given therein amounts to

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

13¼ cents per ton on the basis of 38 tons per car average load. This cost includes no movement charges and is only partial for the terminal charges.

In the case of *Mountain Ice Company vs. Delaware, Lackawanna and Western Railroad Company*, before the Board certain unit costs were derived as representative of the intrastate New Jersey freight traffic on the Delaware, Lackawanna and Western Railroad. Applying these units to the sand business, we derive a terminal cost (including operating expenses, loss and damage, taxes, hire of equipment, joint facility and miscellaneous rents, but nothing whatever for interest, dividends, surplus, profit on the transaction or other net amount above the actual out-of-pocket expenditure) of 17 cents per net ton, and a cost plus four per cent return on the investment of 24½ cents per net ton. These figures include no movement expenses. The terminal cost plus four per cent. return on the investment becomes 34½ cents when the proportional of ten cents for the extra cost of a two-line haul is added. Customarily the terminal charge for a two-line haul is regarded as 150 per cent. of the charge for a one-line haul. On this basis the terminal cost plus four per cent. return on the investment would be about 37 cents per net ton, but we shall abide by the 34½ cents amount previously given.

Sand moves in gondola cars, and has about 90 per cent. as great empty car mileage as loaded car mileage in common with all traffic moving in coal or gondola cars. Applying the results of the *Mountain Ice* case previously quoted to an average haul of 35 miles we derive as the cost only for a single-line haul 31.6 cents per ton; cost plus four per cent. return on the investment 44.3 cents per net ton for a one-line haul, and cost plus four per cent. return on the investment 54.3 cents per net ton for a two-line haul adding ten cents per ton for the cost of interchange. (The

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

latter figure becomes 57 cents per net ton on the assumption of the customary relation between local and interline business.) Further computations for various distances have been made and are set forth in the following table. The figures require no additional explanation.

From all the facts of record and from our computations we must conclude that the present rates are not unjustly discriminatory nor unreasonable per se. The complaint, therefore, will be dismissed. An order will so enter.

Dated January 11th, 1916.

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

SCHEDULE A.

From Whippany Sand Co. and Morris Sand Co.	From Millington		From Succasunna		From Netcong		From Morris Plains	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
Hoboken	30.8	.40	31.1	.40	44.6	.45		
Secaucus			40.9	.45	44.8	.50		
Paterson			30.0	.40	33.4	.40		
Newark	23.0	.40	36.8	.45	40.2	.45	25.3	.35
Montclair	25.9	.45			43.1	.50		
E. Orange	20.8	.40	34.6	.40	38.0	.40		
S. Orange	17.0	.40	30.8	.40	34.2	.40		
Millburn	14.1	.40	27.9	.35				
Summit	10.7	.40	24.5	.35	27.9	.35		
Gladstone	31.1	.40	44.9	.50	48.3	.50		
Chatham	7.4	.40	21.2	.35	24.6	.35		
Madison	5.2	.40	19.0	.35	22.4	.35		
Convent	3.1	.40	16.9	.30	20.3	.35		
Morristown	1.0	.40	14.8	.30	18.2	.30		
Morris Plains.....	3.3	.40	12.5	.30	15.9	.30		
Dover	9.3	.40	6.5	.30	9.9	.30		
Boonton	18.2	.40	15.4	.30	18.8	.30		
Hackettstown	28.0	.45	25.2	.35	8.8	.30		
Phillipsburg	51.5	.60	48.7	.40	32.3	.35		
			70.2	.70				

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

SAND—D. L. & W. R. R.—NEW JERSEY—1914.

38.0 net tons in 18.3 tare ton car, 90% empty car mileage, normal loss and damage, value 30¢ per ton requiring 4% Return.

Miles	38.0 tons net 18.3 tons tare 90% empty car mileage. Normal loss and damage.		Same, adding 10¢ per net ton for the two-line haul extra charge.
	ONE-LINE HAUL		
	Cost only.	Cost plus 4%	Cost plus 4%
0	17.058	24.554	34.554
5	19.140	27.368	37.368
10	21.222	30.182	40.182
15	23.304	32.996	42.996
20	25.386	35.810	45.810
25	27.468	38.624	48.624
30	29.550	41.488	51.488
35	31.632	44.252	54.252
40	33.714	47.066	57.066
45	35.796	49.880	59.880
50	37.878	52.694	62.694
55	39.960	55.508	65.508
60	42.042	58.322	68.322
65	44.124	61.136	71.136
70	46.207	63.950	73.950
75	48.289	66.764	76.764
80	50.371	69.578	79.578
85	52.453	72.392	82.392
90	54.535	75.206	85.206
95	56.617	78.020	88.020
100	58.699	80.834	90.834

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

BEFORE THE BOARD OF PUBLIC UTILITY COMMISSIONERS,
TRENTON, N. J.

July 12, 1915.

(A. S. Learoyd, Witness.)

COPY OF EXHIBIT R-5 WHIPPANY SAND COMPANY vs.

D., L. & W. R. R.

—1—

STATEMENT OF DIRECT COSTS OF HANDLING CARLOAD
TRAFFIC AT ORANGE STREET YARD, NEWARK,
N. J., FOR JULY, 1913.

HARRISON YARD.

Cost of yard, including filling, grading and track work only.

\$79,510.16 @ 5% = \$3,975.08 per year

One month =

\$331.25

Cost of maintenance, track work and labor, April 1, 1913,
to March 31, 1914, averaged per month. Labor, \$311.26

Material, 961.67

1,272.93

Value of the ground, cost of various pieces at time of
purchase: \$32,007.34

5% = 1,600.37 per year,

One month =

133.36

Taxes \$662.17 for one month =

55.18

Pay Rolls, actual for July, 1913.

Yard Masters	\$260.00
Clerks	251.00
Foremen	542.94
Helpers	994.74
Engineers	719.07
Firemen	489.21

\$3,256.96

3,256.96

Engines worked days, 2

nights, 3

Total for month days, 58

(26 days) nights, 82

Total engine days 140

10 hrs. per day = 1,400 engine hours

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Service of 5 engines, or 50 engine hours per 24 hours,
divided as follows:

Broad Street Yard, 8 hours per day.	
Orange " 10 " " "	
Fifth Avenue " 2 " " "	
Harrison " 30 " " "	

50

Harrison Yard, 3% or 60% of \$3,256.96 = 1,954.18

Tunnel Runs, actual pay rolls, July, 1913, figures given
being 1/2 actual expense of operation of tunnel runs,
Hoboken, Secaucus, Harrison:

Foremen	\$291.61
Helpers	531.32
Engineers	372.76
Firemen	244.75

\$1,440.44 \$1,440.44

Engine Service, average figures on operation of switching
locomotives for July, 1913; as reported to the I. C. C.
These figures are on the basis of per mile run, multiplied
by six, the mileage per hour for switching locomotives
as prescribed by the I. C. C.:

Fuel	\$.4710
Lubricants .....	.0102
Other Supplies .....	.0078
Water .....	.0246
Engine Expenses .....	.1926
Repairs .....	.5640

Out of the total of 1,400 switching locomotive hours in the
Newark District, Harrison yard consumed 60% or 840
engine hours—

840 × \$1.2702 = 1,066.97

Cars handled, actual figures for July, 1913:

	Loads	Empties	P.R.R.	Totals
Cars received	6,239	3,105	1,217	10,561
Cars forwarded..	5,642	4,424	915	10,981
				21,542

In the above each car is figured twice, into the yard and
out. To ascertain cars actually handled, divide by 2,
which equals 10,771 cars—

10,771 cars handled at expense of \$6,254.81 = 58.1¢ per car

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

It should be noted that the above costs are only partial. They only include a very limited portion of expense of tunnel runs, viz.: salaries of enginemen and trainmen. Expense of equipment, engine expenses, maintenance of track, signals, right of way and track investment, clerical expenses, etc., are so interwoven with Secaucus and Hoboken, or with passenger service, that they cannot be satisfactorily separated. No portion of indirect expenses, locomotive and car shop investment, depreciation, superintendence, general office expenses are included.

ORANGE STREET YARD.

Cost of yard, including filling, grading and track work only, and does not cover any track work, material or labor in connection with coal trestle—

$\$54,803.27 @ 5\% = \$2,740.16$ per year

$\$2,740.16 \div 12 \text{ months} = \228.35

Cost of maintenance, track work and labor, April, 1913, to March 31, 1914, averaged per month.

Labor \$126.16

Material 270.87

$\$397.03$

Cost of property—Cost of various pieces at the time of purchase, $\$214,486.37 @ 5\% = \$10,724.31$; one month =

893.69

Taxes— $\$2,903.00$, one month =

241.75

Yard Clerks, 3 men @ $\$50.00$, whose time is wholly devoted to carload traffic at Orange Street Yard

150.00

Pay Rolls, see same item under "Harrison Yard" for details.

Out of the 1,400 engine hours in July, 1913, in the Newark District, $\frac{1}{10}$ or 20% was devoted to Orange Street Yard. $20\% \text{ of } \$3,256.96 =$

651.39

Engine Service, see same item under "Harrison Yard" for details.

Basis of 26 days, July, 1913, of 10 hours each actually devoted to Orange Street Yard = 260 hours.

$260 \text{ hours } @ \$1.2702 \text{ per hour} = 330.25$

$\$2,892.46$

Cars handled, see sheets attached.

$802 \text{ cars } @ \$2,892.46 = \$3,607 \text{ per car.}$

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

Between Harrison and Orange Street Yards freight traffic, including ice, is moved some two miles over the Newark elevation across the Passaic River Bridge and through various interlocking systems. No charge has been made for this expensive move for right of way, elevation, maintenance, property investment, taxes, signals, bridges, etc., because the movement of freight is so interwoven with the passenger traffic over the same tracks that satisfactory separation is impossible.

No indirect costs for locomotive shops, depreciation of the same, superintendence, general office expenses, etc., are included.

Number of loaded inbound carloads placed daily in Orange Street Yard, July, 1913:

July 1	18
2	34
3	30
4 Holiday	
5	49
6 Sunday	
7	55
8	25
9	22
10	14
11	26
12	20
13 Sunday	
14	48
15	17
16	21
17	21
18	19
19	21
20 Sunday	
21	45
22	25
23	22
24	16
25	10
26	18
27 Sunday	
28	40
29	23
30	19
31	23
Total	681

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Number of outbound carloads taken from Orange Street Yard, July, 1918:

July 2	3
3	9
4 Holiday	....
5	7
8	2
9	3
10	6
11	7
12	5
14	1
15	3
16	2
17	8
18	6
19	8
21	1
22	7
23	2
24	14
25	3
26	4
28	2
29	5
30	5
31	8

Total 121

Newark station, clerical, etc., \$98.27

\$98.27

Telephone—Actual bills at Newark switchboard, July, 1918.

Rental of lines	\$132.83
Toll messages	21.15
Operator's salary	42.50

\$196.53

Approximately 50% of all calls handled were for Newark freight office.

Heat, Total year 1913 heat cost \$1,016.40.

One month =

84.70

Light, Actual expense current Newark freight office, July, 1913

13.88

226 REPORTS OF BOARD OF PUBLIC UTILITY COMMISSIONERS.

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

Depreciation on equipment, boiler, piping, etc., \$666.24 for year, 1913; one month =	\$55.52
Supplies, Stationery, blanks, books, etc., actual expense, July, 1913,	400.62
Postage, Actual supplies furnished, July, 1913,	70.00
	<hr/>
	\$722.99

Proportion of 74.91 charged inbound freight is on a tonnage basis.

July, 1913, Newark station, 10,021 tons forwarded.

29,914 " received.

Received tonnage 74.91% of total.

74.91% of \$722.99 =

551.59

Salaries, from pay roll, Newark station, July, 1913—

Accountant	\$90.00	74.91% inbound	\$67.42	
Ass't. Acct.....	64.00	74.91	"	47.94
Collector	58.00	74.91	"	43.45
Expense bill clerk.....	52.00	100.00	"	52.00
Expense bill clerk	48.00	100.00	"	48.00
Cashier	85.00	90.00	"	76.50
Notice clerk	64.00	100.00	"	64.00
2 Abstract clerks.....	138.00	100.00	"	138.00
Chief clerk	100.00	74.91	"	74.91
Claim clerk	75.00	74.91	"	56.18
Stenographer	58.00	74.91	"	43.45
Agent	175.00	74.91	"	131.09
			<hr/>	
			\$842.94	\$842.94

NEWARK

\$1,384.58

Only the salaries of clerks whose duties pertain to inbound or in and outbound are taken; billing clerks, etc., who are wholly outbound are omitted entirely. Those engaged jointly are pro-rates on a tonnage basis (74.91%) of inbound. The notice and expense bill clerks are wholly inbound, the cashier is figured on inbound freight bills and outbound freight bills.

Pros. It is assumed that it costs the same from a clerical standpoint to handle every shipment whether the shipment is 100 lbs. or a carload, i. e., the freight bill must be made out, the notice of arrival sent, the entry made on the books and the item abstracted on the reports. Each item, whether carload or less, is practically the same. In July, 1913, 10,223 pros were made out, each representing a separate shipment, freight bill, entry, etc.

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10,223 pros	\$1,384.53 =	.136 each.	
3 car clerks @	\$74.00 = \$222.00		
2,271 cars handled	=	.098 "	\$.234 per car

Car clerks, engaged entirely on carloads, demurrage records, orders for placing, releases, etc.

Cars handled, total carloads handled, Broad Street, Harrison City, Orange Street and Fifth Avenue and Ampere, July, 1913.

EQUIPMENT.

Car Miles,

Reports to I. C. C. for 1913 show:

15,302,255	loaded car miles
6,578,950	empty " "
572,968	caboose " "

22,453,273 Total for July.

Expenses,

Same reports show, July, 1913:

\$165,794.58	Repairs	Freight Cars.
14,108.53	Renewals	" "
73,605.77	Depreciation	" "

\$253,508.88

\$253,508.88 ÷ 22,453,273 = \$.0113 per car mile.

STATEMENT SHOWING AVERAGE MILES PER CAR PER DAY
MADE BY ALL FREIGHT EQUIPMENT ON D., L. & W.
R. R., JULY, 1913.

Month	Avg. Miles per car per day.
January	22.5
February	23.9
March	22.4
April	25.4
May	26.5
June	25.0
July	25.2
August	27.1
September	28.3
October	29.8
November	28.1
December	25.0

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Year 1913—25.6**25.2 miles for July at .0113 per mile = .2847 per car per day.**

Average detention, time received at Harrison Yard underloaded until despatched empty, all cars handling ice, July, 1913 (see statement attached), 2.15 days.

2.15 days × 28.5 cents = 61.3 cents per car.**TOTALS**

Harrison Yard	\$.581
Orange Street	3.607
Newark Clerical .....	.284
Equipment .....	.618

\$5.085

In considering the foregoing statement it should be borne in mind that in so far as the service actually covered is concerned, direct costs which can be charged directly to the yards or service involved, have been used. The overhead and indirect expenses are not included because it is almost impossible to segregate and allocate them properly to the ice traffic on a per car basis. Such items are superintendence, general office expenses, soliciting, advertising, cost and maintenance of engine shops, car shops, etc. On the other hand, it is but fair to say that if these items were included they would not materially increase the expenses shown.

The items of considerable expense, not included in the terminal handling of these items, are the expenses at Secaucus Yard, as already pointed out on Page No. 2, and no expense in Secaucus Yard of switching out the loads from through trains, or making up the empties for the west-bound movement, is included.

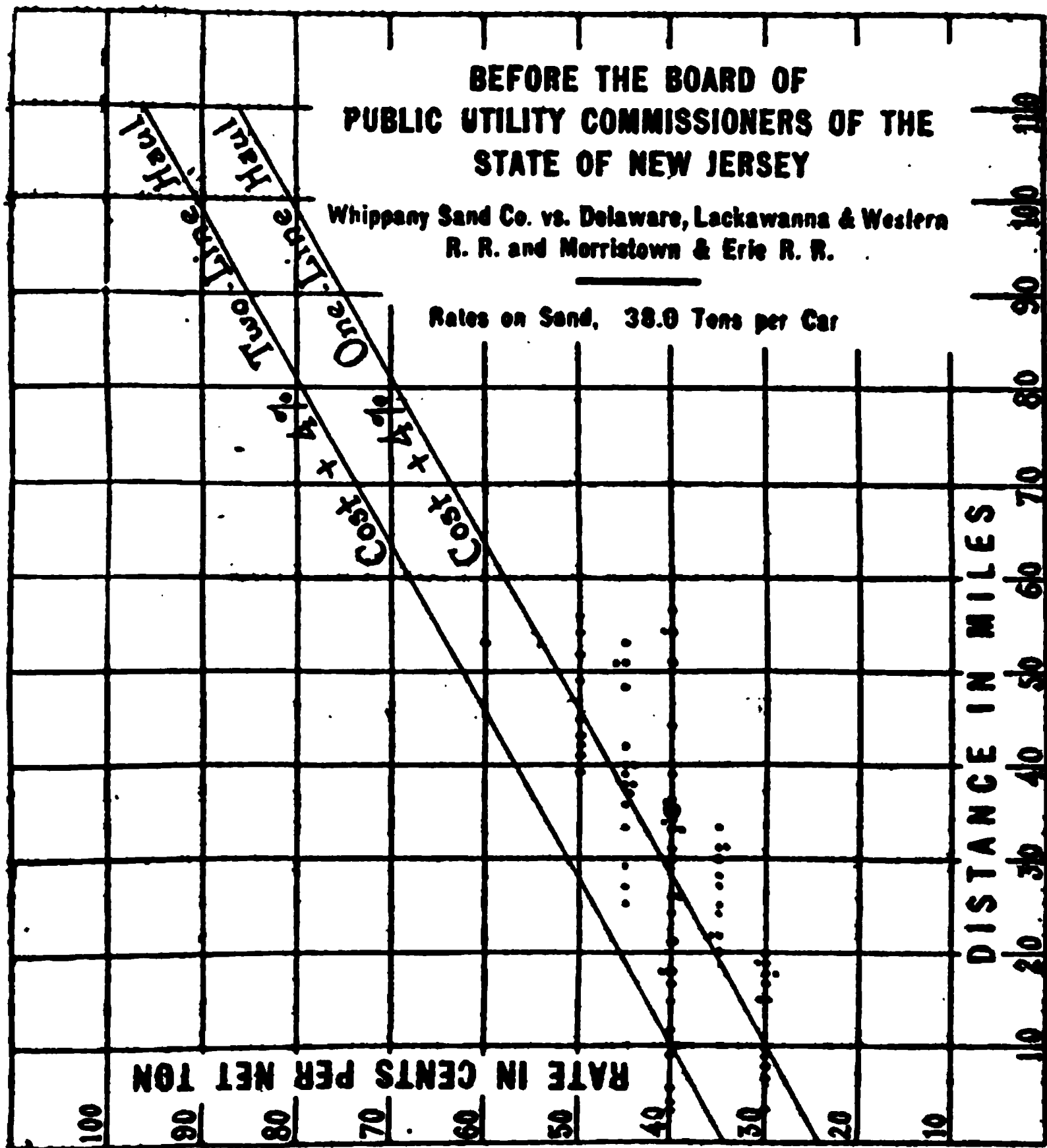
The second item which would have a material effect on the terminal expense is that involved in the right of way inter-locking plants, signal towers, investment in track and elevation, as well as the Passaic River Bridge, and in the maintenance of this track and bridge between Harrison Yard and Orange Street Yard. Because of the inter-weaving of passenger and freight traffic, it is impossible to allocate these items to the freight traffic delivered in Orange Street Yard. The two yards covered, viz.: Harrison and Orange Street, are entirely freight propositions, no passenger service or movement of any description being involved in either one of them.

During the fiscal year, 1913, the New Jersey Division was operated for 70% of the gross. The ice loading to all destinations during that year averaged 29.8 tons per car, at an average revenue of 52.5 per net ton, or \$15.64 per car. On a gross revenue of \$15.64, the operating expense would be equivalent to 70%, or \$10.95 per car. Out of this

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.

amount, this statement of terminal cost, only covering the items mentioned, shows that \$5.04 was consumed at Newark. The balance of \$5.91 had to cover the items not included in the terminal cost, plus originating expense and transportation from shipping point to Secaucus and return. The difference between \$15.64 gross revenue and \$10.95 representing the operating expense, or \$4.69 per car, was only sufficient to bear its share of the 3½% earned on the actual investment on the Morris and Essex Railroad.

Whippany Sand Co. et al. vs. D., L. & W. R. R. Co. et al.



City of Trenton vs. Public Service Gas Co.

ORDER.

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof,

It is ORDERED that the complaint in this proceeding be, and it is hereby, DISMISSED.

Dated January 11th, 1916.

No. 319.

INHABITANTS OF CITY OF TRENTON

VS.

PUBLIC SERVICE GAS COMPANY.

The increased use of gas because of its heating value has been so great in the past twenty years as to change the relative conditions under which gas is used. The quantity of gas used because of its heating value ranges somewhere between 80 and 90% of the whole. To impose upon the users of 80% of the gas an increased burden, due to an increased cost of manufacture, amounting to from eight to fifteen cents per M. cu. ft., would be unjust and unreasonable. This is especially true when it is found that there are satisfactory substitutes for the flat flame burners which result in large savings to those who depend upon gas for illumination. The company's duty extends:

1. To the production of gas having a certain purity and certain value with regard to its heat units and its illuminating value, which illuminating value because of present methods of manufacture cannot fall much below 16 candlepower.

2. Gas must be delivered as far as the outlet side of the meter under such conditions with regard to pressure as to admit of the efficient and satisfactory use of gas.

City of Trenton vs. Public Service Gas Co.

3. Gas must be measured correctly.

4. The measurements as indicated on correct meters must be clearly set out on the bills sent to the customers.

If a gas company fulfills the above requirements and in doing so deals with its customers in accordance with reasonable rules and regulations, adequate and proper service will be provided.

Charles E. Bird and Henry M. Hartman, for the City of Trenton.

H. T. Robinson, Secy., Wilbur Civics Association.

George H. Royle, President Reservoir Vicinity Association.

Mrs. Maude R. Dolton, Secy., The Contemporary Club.

Mr. Charles K. Hammett, Chairman Special Committee, Trenton Chamber of Commerce.

L. D. H. Gilmour, for the Company.

The complaint in this matter was submitted by the Board of Commissioners of the City of Trenton and alleges the following:

1. That numerous complaints have been made to the Board of Commissioners of the City of Trenton * * * respecting the poor and insufficient illuminating power of the gas being furnished to the citizens of said city by the Public Service Gas Company. * * *

2. That all of the gas furnished for public and private consumption is supplied by Public Service Gas Company.

3. That on October 9th last past a resolution was adopted by the Board of Commissioners of said City, which reads as follows:

City of Trenton vs. Public Service Gas Co.

"WHEREAS, There seems to be a consensus of opinion that the quality of gas being furnished consumers in Trenton is of an inferior grade for illuminating purposes, and

"WHEREAS, The impression prevails that the State Board of Public Utility Commissioners has full and sufficient authority, under the statutes creating it, to fix a proper and merchantable standard of gas for illuminating purposes throughout the State because the standard of gas for illuminating purposes fixed by the Act of the Legislature of the year 1877 has been practically repealed by the grant of powers to the State Board of Public Utility Commissioners enumerated in the act creating the Board, and

"WHEREAS, If the prevalent impression is legally correct, the State Board of Public Utility Commissioners has ample and sufficient legislative authority to require the public serving gas companies to supply gas for illuminating purposes conformable to a higher standard than that referred to in the act of 1877, and

"WHEREAS, The City of Trenton in order to secure an improved gas supply for illuminating purposes must seek the co-operation of the State Board of Public Utility Commissioners; therefore be it

"RESOLVED, That the City Solicitor, on behalf and in the name of the City of Trenton, be directed to prepare and file a petition with the State Board of Public Utilities complaining about the inferior illuminating power of the gas supplied by the Public Service Corporation to the consumers of gas in Trenton and praying the Board to increase the standard of gas for illuminating purposes.

4. **"That your petitioner, through the city chemist, has caused numerous tests of the illuminating power of the gas, now being furnished in said city as aforesaid, to be made, and that the said city chemist has reported that the result of such tests has disclosed that in respect to the illuminating power of the gas now being served in said city it is at least equal to the standard fixed by Section 18, Compiled Statutes, p. 3146, but that your petitioner is not advised and does not know whether the gas now being furnished to public and private consumers in said city complies in other respects with the requirements and standards fixed by the said act."**

5. **"That the standard now fixed by law was established many years ago, to wit, during the year 1877. That owing**

City of Trenton vs. Public Service Gas Co.

to the improved methods of manufacture, and the changed conditions of living and of conducting business, it is not only practical but entirely reasonable as well, to require the furnishing of gas of a greater illuminating power than the existing standard now fixed by law.

6. "That your petitioner is advised and believes that your Honorable Body is clothed with ample power and authority, under existing statutes, to fix a standard other than that now established by law, if upon investigation by your Honorable Board it shall be found just and reasonable so to do."

7. "That your petitioner is also advised that numerous complaints have been filed by individuals and associations respecting the quality of the gas supplied in the City of Trenton."

"Your petitioner, therefore, prays that your Honorable Body investigate as to the illuminating power of the gas being supplied to consumers in the City of Trenton, and that if upon such investigation it shall be found to be practical and reasonable to require the furnishing of gas of a greater illuminating power than the existing standard now fixed by law, that an order be made fixing a standard requiring greater illuminating power, to wit, a standard equal to that established by law in the State of New York, that is to say a gas of 22 candle-power."

The answer of the Public Service Gas Company to the above complaint stated:

(1) That the respondent was not informed as to the truth of the first statement made in the complaint, but denied that it was furnishing a "poor and insufficient illuminating power of gas" to the citizens of the City of Trenton.

(2) The company admitted that it was the company furnishing gas service in Trenton.

City of Trenton vs. Public Service Gas Co.

(3) The respondent denied "that the complainant had any cause for complaint in respect to the gas furnished the inhabitants of the City of Trenton for illumination and other purposes."

(4) The respondent admitted that the gas being furnished to the citizens of Trenton was equal to the standard fixed by section 18, Compiled Statutes, p. 3146, and further insisted that it was also equal to and in excess of a standard fixed by the Public Utility Commission.

(5) The respondent, while admitting that the illuminating standard referred to was established in the year 1877, denied that a candle power standard was either practicable or reasonable under existing conditions; that since the introduction of gas mantles the important element in connection with illuminating gas is the heating power.

The respondent further insisted that the overwhelmingly larger proportion of gas is used in connection with devices in which heat units play a more important part than illuminating power, and that the greatest good to the greatest number of users of what is known as illuminating gas requires that a heat unit standard and not a candle power standard be fixed for the gas.

The respondent further contended that the element introduced in gas to increase its illuminating power in open flat flame burners derogates from its usefulness in connection with apparatus where heat is essential, in that it creates a condition that tends to accumulate a deposit of carbon on the burners or mantles, and for the benefit of a few, makes the commodity less valuable to the large majority of users.

(6) The respondent neither admitted nor denied the statements made in paragraphs 6 and 7, but insisted that the matters set out in the City's complaint are *res adjudicata*; that the Public Utility Commission had already, un-

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der its power to adopt standards, fixed standards for gas, and that the respondent in the City of Trenton has always and does maintain its product up to and in excess of the standard required.

The respondent further contended:

(1) That there was no specific charge in the complainant's petition of any manner, place or time in which or at which the gas furnished by the respondent is or has been deficient.

(2) That the complainant does not charge that the candle power of the gas furnished is not sufficient or that the pressure at which the same is furnished is too great or too small, but alleges merely that there is general dissatisfaction among the respondent's customers in Trenton with the gas supplied.

This statement the respondent emphatically denied, and supported this contention by stating that attached to each of its October bills a notice had been sent to each of its 11,000 customers in Trenton, in the form of a return postal card asking each customer to send in answers to various questions or complaints regarding any feature of the service received. In reply to the 11,000 notices sent out, the company's answer sets forth that but 220 replies were received, and that analysis of these replies did not indicate cause of complaint on the part of the respondent's customers in the City of Trenton.

Hearings were held on the issue joined by the above complaint and answer.

Before considering the testimony presented at the hearings, an explanation should be made of the reference in the company's answer to the standards adopted by the Board for gas service. The complaint filed by the City of Trenton indicates that the city officials were unaware that the Board had at any time adopted standards for such service.

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Chapter 195 of the Laws of 1911, under which the Public Utility Commission is organized, provides as follows:

Section 11. 16: The Board shall have power: * * *

(e) After hearing, by order in writing, to fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed thereafter by any public utility as herein defined.

(f) After hearing, by order in writing, to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other condition pertaining to the supply of the product or service rendered by any public utility as herein defined, and to prescribe rules, regulations for examination and test of such product or service, and for the measurement thereof.

(g) After hearing, by order in writing, to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements.

(h) To provide for the examination and test of any and all appliances used for the measuring of any product or service of a public utility as herein defined.

In accordance with the provisions of the Act referred to, after a series of hearings, at which were present representatives of gas companies, institutions of learning, other state commissions and of the National Bureau of Standards, the Board, as of October 17th, 1911, promulgated in the form of an order addressed to each gas company, a set of rules and regulations. These rules and regulations were designed to produce the following results:

(1) The gas as manufactured must have certain characteristics with regard to its heating value and its purity.

(2) Must be delivered under such conditions as to pressures as will make possible its efficient use;

(3) Must be measured correctly, and

(4) Must be billed in accordance with correct measurements correctly taken and shown.

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Rule IX reads as follows:

"The company furnishing gas which within a one-mile radius from the distribution center gives a monthly average total heating value of not less than 600 Btu. with a minimum which shall never fall below 550 Btu. may be considered as giving adequate service as far as the heating value of gas is concerned."

Rule X reads as follows:

"Each gas company whose output exceeds 20,000,000 cubic feet a year shall equip itself with a standard calorimeter outfit constructed and calibrated as approved by the National Bureau of Standards with which periodic tests upon the gas shall be made. A record of these tests shall be made and kept on file in the office of the company."

Rule XI.

"Gas pressure as measured at meter inlets shall never be less than $\frac{1}{2}$ " nor more than 6" of water pressure; and the daily variation of pressure at the inlet of any one meter on the system shall never be greater than 100% of the minimum pressure."

Rule XII.

"Each company shall make frequent measurements of the pressure and pressure variations, and these shall be kept on file in the office of the company."

Rule XIII.

"In no case shall the gas contain more than 30 grains of total sulphur per hundred cubic feet, and not more than a trace of sulphur as sulphuretted hydrogen."

Rule XIV.

"Each company shall keep a record of complaints, in regard to service, which shall include the name and address of the consumer, the date, the nature of the complaint, and the remedy."

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From these quotations, it will be noted that the Board has already given consideration to the matter of gas standards, and has adopted certain standards.

It will be noted further that these rules prescribe a standard for gas based upon its calorific or heating value, and are silent with reference to the illuminating or candle power standard.

At the time of the adoption of these rules, it was thought that no company would attempt to furnish gas having an illuminating value lower than that prescribed by the statute of 1877, namely, 14 candle power. It was known, also, to the Board that no company in the State was furnishing gas at the time having a candle power much below 16.

With reference to the request of the City that the Board establish a standard candle power similar to that "established by law in the State of New York, that is to say, a gas of 22 candle power," it should be noted that up to about a year ago the statutes of New York State required companies furnishing coal gas to supply gas of not less than 16 candle power; companies furnishing carburetted water gas to supply gas of not less than 20 candle power; and companies furnishing mixed gas to supply gas of not less than 18 candle power. These are the only statutory requirements.

In the contract under which the Consolidated Gas Company furnishes street lighting service through the medium of flat flame burners to the City of New York, it was provided that gas should be supplied having an illuminating value of not less than 22 candle power.

In 1907, the legislature of New York State created a Public Service Commission. In accordance with the general policy of New York State, this commission was charged with the responsibility of requiring public utility companies to live up to the statutory requirements concerning such

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companies. The commission did not have powers similar to those bestowed upon the New Jersey and Wisconsin Commissions, by which such commissions may impose upon public utility companies rules and regulations governing standards of service.

The Wisconsin Railroad Commission had in 1907 adopted in the form of an order rules and regulations governing gas service, and as it was apparent to the New York Public Service Commission that new standards should be adopted, either supplementing or superseding the existing standards, a joint committee was formed of representatives of the commission and of the gas companies of New York State for the purpose of studying the conditions under which gas was manufactured, and of preparing a report to the commission making such recommendations with regard to standards for service as their investigations should warrant.

The joint committee worked in conjunction with a committee of the American Gas Institute, which is the association of professional gas engineers.

The report referred to was submitted to the Public Service Commission of the Second District at Albany, N. Y., as of March 6, 1913, and a copy was put in evidence in this proceeding.

William McClellan, Ph. D., a member of this committee, who was at the time Chief Engineer of the New York Public Service Commission, Second District, testified in this case with reference to this report (see testimony p. 132, Jan. 19, 1915).

This matter is of so much importance, and is of such great interest to the gas using public generally that a somewhat lengthy quotation from the report referred to is appended hereto, and marked "Appendix A."

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With reference to the gradual changes which have taken place in the standards for "illuminating gas," the following should be noted:

(1) Up to 1906 practically all standards for gas, both in this country and abroad, prescribed a certain illuminating value, but contained no requirements as to heating value.

As early as 1894, however, gas engineers had begun to recognize the inadequacy of a photometric standard and the necessity for determining a calorific value.

(2) A calorific standard was first established in 1906. Since that time this measure of the quality of gas has been adopted quite generally abroad and in a number of instances in this country.

(3) The standards adopted for calorific value appear to have been based upon the kinds of gas being furnished in the various states and municipalities at the times when the standards were adopted.

(4) Wisconsin, which was the pioneer in the establishment of a state standard of heating value, did, through the Wisconsin Railroad Commission, conduct a series of tests before the adoption of the requirement now in force, but it does not appear that these tests covered a sufficient period of time or a wide enough variety of conditions to be conclusive.

It should also be noted that great strides have been made in the science of gas calorimetry since that time.

At the beginning of the year, 1913, heating value requirements were in force in five states and in some thirty cities.

In 1906 a number of English cities adopted heating value standards. Several cities in France have already adopted such standards. Since 1902 many German cities have carried on regular tests to determine the heat value of the gas furnished the citizens. Two cities in South America have had heating value standards since 1908.

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From the information available, it appears that the standards adopted in the various European countries were not based upon any very definite information. It is certain that all of such standards were lower than those in force in this country, and it is evident that the lower standards were based upon certain economic conditions which led the various authorities to believe that, all things considered, the customers obtained more service for the least money under the prescribed conditions.

Testimony was submitted by the Mayor of the City of Trenton to the effect that complaints had been received from various citizens respecting gas service; and the city chemist testified as to tests which he had made of the gas supplied. He testified both as to the illuminating and heating values of the gas supplied in the city of Trenton.

Rev. Thaddens H. Hogan submitted information concerning the increase in cost of lighting the institutions under his charge, and contended that the cost had increased from year to year in ways that were not explainable.

The solicitor for the city submitted as an expert witness, R. S. McBride, an associate chemist of the National Bureau of Standards. Mr. McBride went into the question of illuminating value as well as of heating value of the gas and described some of the work of the National Bureau of Standards, and of the Public Utility Commission in the District of Columbia.

He testified also with regard to rules adopted in other states upon the recommendation of the National Bureau of Standards.

On cross-examination, Mr. McBride stated that a fair summary of his testimony before the Maryland Commission was as follows: (Test., p. 31, Jan. 5, 1915).

"That the real worth of gas is best measured by heat units; that 13 c.p. gas with a mantle is as valuable as 20 c.p. gas without a mantle;

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that heat units can be maintained more closely to a fixed number than candlepower thereby insuring economy of manufacture."

His discussion tended to the conclusion that the best service to the public demands a standard of thermal units with a minimum of 600, and that mantles on lights, if put into general use, would cure all defects arising from lighting power even as low as 13 candle.

On further cross-examination, Mr. McBride stated that the Pennsylvania Commission had consulted with him as to the heating value standard, but had not discussed at all any standard with reference to illuminating value.

When asked if he was familiar with the New Jersey standard, he stated that he was, and further stated that it compared very closely with New Hampshire, District of Columbia, Oregon and a number of other states.

He further stated that he was not familiar with conditions in Trenton.

When asked if he could express an opinion as to what proportion of gas was consumed in open flame burners, he said:

"Estimates on this point vary from 2 to 20%, that is from 2 to 20% of the gas is used for open flame lighting. I believe the average would lie somewhere between these two values.

"Q. The average, then, in your judgment, is somewhere around 12%?

"A. It varies for different localities greatly. In the far west, it is much lower than in the older eastern cities. For the whole country, I would not undertake to make an average because conditions vary so widely."

Mr. McBride stated further that definite figures regarding the use of gas in open flame burners were not available, but that for all the larger cities, that is, cities of 100,000 and larger, that perhaps 10% of the gas is used in open flame lighting.

Mr. McBride was asked if the blackening of mantles which had been complained of was directly connected with

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the candle power of the gas. His answer was that it depended upon other factors than candle power of the gas.

Mr. McBride further testified that there was no necessary relation between the illuminating and heating values of the gas; that a gas of 600 Btu. might have any illuminating value from zero to 20 depending upon the method of its manufacture.

Mr. McBride was asked if it would be commercially possible to manufacture a coal gas in Camden, enrich it and deliver it in Trenton with an illuminating value of 22 candle power. He stated that it would not be commercially possible to do this unless it was enriched after reaching Trenton. He stated that as a personal opinion, and did not wish to speak for the Bureau of Standards. He further stated, however, that he did not know of any case where that sort of thing had been done.

Further testimony showed that when gas is transmitted under heavy pressure the illuminants are lost, and are not transmitted to the points of distribution. When asked if it would be practicable to establish a standard of lighting value, if not more than 10% of the gas consumed was consumed in open flame burners, Mr. McBride stated:

"It would be practicable, but perhaps not necessary, that is, it may be that this 10% is used by a considerable number of the customers for the uses where they do not need a very high candlepower, and it may be that they get, without any regulation, a sufficient candlepower. It depends very largely upon the character of the consumption and what the customers would get without regulation, whether the regulation is necessary."

When pressed further for a more detailed answer, he stated:

"It is purely an economic question. If an illuminating standard will give to the customers something more than they get without the illuminating standard, it is worth what it costs to get that. If it costs less to

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get the illuminating value than it is worth to have it, good sense tells us that it is worth while to have the illuminating requirement."

When asked if it would increase the cost where a system was used to furnish gas for both purposes: illuminating and heating, if a high standard, say 20 or 22 candle power were fixed for the open flame burner, would that increase the cost of the 85 or 90% of the gas used for heating purposes and in mantle burners? He stated that he believed it would increase the cost of manufacture.

Mr. McBride was asked the following question:

"Would you say that a standard of 20 or 22 candlepower for the City of Trenton, assuming that the gas is manufactured in Camden, 30 or 35 miles away, would be a reasonable and practicable standard?"

In reply he stated:

"I don't think at the present time there is any condition of which I know that would demand a standard as high as 20 candlepower. I have failed to find any city that has need of such a high standard."

(For some years past all gas furnished in Trenton has been a by-product of the coke works in Camden, and was at one time enriched in Trenton. Owing to the increase in the demand for gas, a water gas plant has been operated in Trenton during the winter. The water gas has been mixed with the coal gas from Camden. In the summer time all gas needed comes from Camden. During the winter, about 25% of the gas was water gas manufactured in Trenton and mixed with the coal gas.)

Mr. McBride was asked the following question:

"In your judgment, what would be a reasonable standard, assuming the conditions as you understand them?"

"A. I believe a standard from an economical standpoint should probably be fixed to suit the time of year, or so that at the time of year when only coal gas is supplied, the standard would be suitable for coal gas,

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and the customers would get more than that candlepower when the water gas was made, no doubt; but if you do not do that, I assume it would make some of that coal gas practically useless for distribution with this system in the summer season. As a general thing water gas costs more than coal gas in large plant operating conditions, and so I suppose it would not be an economical advantage to insist upon the operation of the water gas set throughout the year in order to maintain this candlepower throughout the year. As to numerical value, that would depend somewhat on the method of manufacture."

Mr. McBride further stated that enrichment of coal gas is supposed to cost more than it is worth.

In conclusion, Mr. McBride, after giving a list of cities and states which had adopted calorific standards, and other cities which had given up candle power standards, was asked the following question:

"As you go around the country and come into contact with different commissions controlling this question of standard for gas service, do you find that it is the policy of the commissions or inclination of the commissions to raise the candlepower standard as a general policy?"

"A. The statement of the Bureau in its third edition to the circular (referring to Bureau of Standards Bulletin No. 32) perhaps answers that better than I could do. All candlepower measurements are more and more being made to test the efficiency of mantles, appliances and lighting installations rather than to test the quality of the gas itself. That would reflect the general tendency on the part of the commissions of the country, I believe.

"Q. The general tendency is to abandon the candlepower standard and to center on a heat unit standard, is it not?"

"A. I believe it is unquestionably."

At the resumption of the hearing, Mr. Anastacius Paropek, city chemist, testified that he had made examinations of the illuminating and heating values of the gas, and found that up to October 20th, 1914, the illuminating value averaged 16.2 candle power, but that from October 21st to November 1st, the average illuminating value had been 18.8 candle power.

He further testified to the fact that the increase in the illuminating power was due to the commencement of opera-

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tions of the carburetted water gas plant and the mixing of the water gas with the coal gas received from the plant in Camden. The heating value of the gas he testified as having an average of 613 Btu.

H. W. Danser, an order clerk in the employ of the Public Service Gas Company, attached to the Trenton office, testified that under instruction he had sent out with each gas bill, delivered on November first, a return postal card, a copy of which was submitted in evidence, upon which each customer was asked to send in complaints if there were any regarding the character of service furnished to the recipient of the notice. He testified that there were about 12,000 of these cards sent out, one being sent to every customer who ordinarily received a bill for gas service. In this way, such a notice was sent to every gas customer excepting those who were served through prepayment meters. Three hundred and twelve replies were received, this amounting to 25/100 of 1% of the total number of customers.

These replies had been tabulated, and quoting from the testimony on Page 97, the following is noted:

"High bills, 42; fixtures or house pipe leak, 39; fixtures or house pipe stopped up, 29; leak at the meter, 29; reflex lights out of order, 28; range out of order, 19; poor service, 17; range leaks, 16; no cause for complaint, 12; cheap reflex lights, 11; want the salesman to call, 4; broken mantles, 2; inquired about heating stoves, 2; prepayment meter out of order, 1; wants the house pipe tested, 1; wants a fitter to call later, 1; needs a goose-neck, 1; new reflex light, 1; needs a new globe for arc, 1; noisy meter, 1; wants a meter, but refuses to pay old bill, 1; water heater out of order, 1; wants a balance of a reflex light delivered, 1; arc light out of order, 1; wants a meter, 1; will not answer the bell, 1; leak at the water heater, 1; fixture cock too tight, 1; wanted a bill, 1; wanted a hot plate griddle, 1; wanted a pilot fixed with a reflex light, 1; two-burner hot plate and a kitchen light, both on $\frac{3}{8}$ " pipe, wants to use both at the same time, 1; dirty inside arc, 1; radiator attached to a Bray burner, 1; wants a meter unlocked, 1."

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Mr. Danser testified that of the 17 customers classified above as complaining of poor service, he stated that they were so classified because when he called at the house, he was unable to find anything wrong. The classification above is practically a classification made by Mr. Danser after he had called on every one of the 312 who sent in replies to postals. Mr. Danser testified that in addition to his own call on these 17 complainants, the matter had been referred to a fitter, who had further looked up the conditions in the neighborhood.

Mr. E. H. Farnshaw, Gas Engineer and Chemist and Assistant General Manager of the Public Service Gas Company, testified concerning the cost of operation for various classes of burners, comparing the cost of illumination by flat flame burners with cost for various types of modern high efficiency burners. The data upon which he based his testimony was submitted as Exhibits 1, 2, 3 and 4, and consist of four charts which are reproduced in this report as charts Nos. 1, 2, 3 and 4. On examination of Chart No. 1, we find that the horizontal line shows the number of hours of burning; the vertical line shows the cost of illuminating. Take, for example, the line which is marked "actual cost of burning one flat flame." If we take the line marked 500 hours and carry it up until it intersects that line, we find the cost of burning one flat flame is about \$2.25 for 500 hours. That is based on burning five cu. ft. per hour with gas at ninety cents per M. cu. ft., which is the rate charged in the City of Trenton. Comparable with a single flat flame might be taken, one Junior Welsbach burner, the cost of operation also being shown in Chart No. 1. The cost of this burner is thirty-five cents complete. To determine the cost of illumination, we must start with the original cost of 35 cents and add to that the cost of the gas consumed. As the average life of the man-

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gles used with these burners is about 500 hours, we assume that a new mantle at a cost of 20 cents is put in place at the end of 500 hours. Inasmuch as many of the high efficiency burners are not well adjusted to the actual conditions found on individual consumers' premises, the amount of gas used has been assumed at 20% in excess of the manufacturers' rating and this allowance is made in drawing the curve showing the cost. Examination of the curve in Chart No. 1 shows that the illumination from the Junior Welsbach burner at the end of 500 hours has cost about \$1.25 as against \$2.25 for the illumination produced by the ordinary flat flame burner. At the 500 hour point, the renewal of the mantle at a cost of 20 cents results in an average increase of about 4 cents so that the actual average cost for illumination is about \$1.29 for 500 hours' illumination. The above comparisons are made on the assumption that the flat flame burner consumes five cu. ft. per hour, while as a matter of fact the majority of the ordinary flat flame burners burn more than six cu. ft. per hour. The Junior Welsbach burner is rated at two cu. ft. per hour, but as already stated, due to the frequent lack of proper adjustment, the consumption of gas is assumed at 2.4 cu. ft. per hour.

Chart No. 2 shows the cost of operation of the ordinary upright mantle burner. This burner consumes about 5 cu. ft. per hour, the same as the standard open flame, but it gives approximately 100 measured candle power as against 22, in other words, nearly five times as much illumination. Such a burner without an extra shade costs \$1.10 and with the shade, \$1.35. It is found that for 500 hours burning the cost of operating such an outfit, including the original cost of the installation, is about \$3.30. The cost of gas burned in the open flame burners to give an equal total illumination would be about \$7.80, so that from the

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standpoint of purchased illumination by gas, the failure to utilize the modern equipment is extravagant and wasteful.

Chart No. 3 in the same manner shows the comparative cost of illumination by flat flame burners and by Reflex No. 3 burner. In this case, it is found that for 500 hours burning, including the original cost of installation which is \$2.00, including the shade, the cost for 500 hours' service is \$4.00 for the Reflex burner and \$10.00 for the same illumination obtained by means of open flame burners, even where the candle power is 22.

Chart No. 4 gives data concerning a lamp which has been designed especially for use where chandeliers are equipped with fancy glassware, which the owners prefer to continue in use. No globe is required but a special shade is necessary. The use of this burner results in comparative saving proportionate to that found with other forms of burners.

From some of the statements above, it will be noted that adjustment is essential in order to get the best service from mantle burners. The gas company makes a practice of adjusting burners upon complaint from the customers, and where good service is not being obtained by individual customers a request should be immediately lodged with the gas company for assistance in having the burners adjusted. This service is rendered to the customers without charge, but unless request is made for the same, the company has no knowledge of the need for such assistance.

Mr. J. B. Kloumpp, a Gas Engineer, who has for some years been an officer of the American Gas Institute, testified that he had been actively engaged for a number of years investigating the heating and illuminating values of gas. He stated that he, representing the gas industry, generally, had co-operated with the Public Service Com-

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mission of New York State in the investigation of gas manufacturing conditions, which resulted in the report already referred to.

The only point of note in Mr. Kloumpp's testimony, which has not already been referred to, was that the committee recommended the adoption by the New York State Public Service Commission of a standard for gas, which would call for a monthly average heating value of 570 Btu.

In this connection, it should be noted that the rules of our own State require a minimum monthly average of 600 Btu. Monthly reports are made to the Board by all of the gas companies in the State, whose annual output exceeds 25,000,000 cu. ft., showing the daily results from tests of the heating value. The Board's rules also require that at no time in the month may the minimum fall below 550 Btu.

Since the promulgation of rules for gas service by the New Jersey Commission, rules have been promulgated by commissions in other states as follows: Nevada, monthly average of 550; Washington, 600; Indiana, 600; New Hampshire, 600; Pennsylvania, 570; Montana, 475 (this difference is partly due to elevation above sea level for which a correction has to be made); Oregon, 600; District of Columbia, 600; Illinois, 565.

William McClellan, Ph.D., now a consulting engineer, but formerly Chief Engineer of the New York State Public Service Commission, 2nd District, testified with reference to the investigation made in that State of the conditions under which gas is manufactured and distributed.

Dr. McClellan's testimony was conclusive, based as it was upon investigations made in New York State cover-

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ing a period of about four years, to the effect that the increase in candle power above that found in the gas as originally produced requires enrichment; that the enrichment is an expensive process; that this added expense extends to all of the gas manufactured, and not to that small portion of it which is used because of its illuminating value.

Gas as manufactured in Camden has a candle power of between 15.9 and 16.2 candle power. Mr. Parobek, the city chemist, in his tests at the city hall, found an illuminating value which averaged 16.2 candle power during a period in October, 1914. Mr. Parobek also found that from October 21st to November 21st, the average illuminating value was about 18.8. This was due, as was testified, to the fact that water gas sets located in Trenton had been started up and were generating gas, which supplemented the supply from Camden. It has been stated above that the New York State statute concerning candle power of gas requires coal gas to have a candle power of 16, mixed gas a candle power of 18, and straight water gas a candle power of 20. Water gas, as produced in the generators, has both low heating value and low candle power and must be enriched in order to give sufficient heating value to conform to the Commission's standards. This enrichment incidentally brings the candle power up to a point not much below 20. The enrichment, as stated, however, is an expensive process and under all circumstances straight water gas is not as economically produced as coal gas or mixed gas, when the value of by-products is taken into account.

CONCLUSIONS.

The complaints concerning poor service in Trenton naturally must have some foundation. Trenton is not a new

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city; some portions of it are as old as any municipality in this State. Many of the houses in Trenton were piped for gas many years ago, before gas was used as extensively as it is today, and when the importance of ample-sized piping was not realized. Furthermore, gas piping becomes clogged with materials which interfere with the passage of the gas. This is not as true today, however, as it was some years back, when the methods of purification were not so well developed as they are today.

As testified by Mr. Parobek, many of the houses in Trenton which depend entirely upon gas for illumination, are occupied by families who have not long been in this country and who are not familiar with modern high efficiency appliances. This condition of affairs is not confined to the late comers, as the improvements in gas appliances have been so rapid in recent years that the ordinary public has not been fully informed of these improvements. The increased use of gas because of its heating value has been so great in the past twenty years as to change the relative conditions under which gas is used. Another element which has effected this change is the increasing use of high efficiency electric lamps. As a result, we find today that the quantity of gas used because of its heating value ranges somewhere between 80 and 90 per cent of the whole; some estimates have even placed it at a higher point and in some communities that may be true. To impose upon the users of 80% of the gas an increased burden due to an increased cost of manufacture amounting to from eight to fifteen cents per M. cu. ft. would be unjust and unreasonable. This is especially true when it is found that there are satisfactory substitutes for the flat flame burner, which result in very large savings to those who depend upon gas for illumination.

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This is borne out by a statement in a report by Morris Llewellyn Cooke, Director of Public Works of the City of Philadelphia, on the cost of producing illuminating gas in American cities. He states as follows: "Since, undoubtedly, in excess of 75% of all gas now used is for purposes where a calorific value is the only essential, comparisons are justified, though a survival of the candle power standard in some places has an influence in causing the retention of somewhat more costly methods of manufacturing than are really desirable."

It is the practice of gas companies, and the Public Service Gas Company is no exception, to keep permanently employed a number of fitters who will without charge make adjustments in burners and appliances in order that the customers may obtain the best service from the burners and appliances which they have in use. The Board believes this is a good practice, and should be continued. The Board is further of opinion that the company ought to systematically call the attention of the customers who use gas for illumination to the modern appliances for illumination by gas, give information as to where these articles may be obtained, and calling attention also to the company's practice with regard to care and inspection of customer's equipment.

The Company's system of keeping records of complaints does not appear to be lacking and testimony submitted in this case shows that complaints have been followed up with a reasonable degree of promptness. The attention of the public is called to the fact that one of the Board's rules requires that the gas companies keep records of all complaints, which records shall show the nature of the complaint, the nature of the remedy, time it was received and the time remedied. Because of a large number of older houses in Trenton, it is quite certain that many of the com-

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plaints of poor service arise from insufficient or clogged up piping, and where the customers are now suffering from poor service, the attention of the company should be called to the condition with request that the company inspect the premises to determine whether the remedy lies in the renewal of a service pipe or in the renewal or overhauling of the house pipe.

The company's duty, as the Board sees it, extends, 1st, to the production of gas having a certain purity and certain value with regard to its heat units and its illuminating value, which illuminating value, because of present methods of manufacture cannot fall much below 16 candle power.

2nd. Gas must be delivered as far as the outlet side of the meter, under such conditions with regard to pressure as to admit of the efficient and satisfactory use of the gas.

3rd. Gas must be measured correctly.

4th. The measurements as indicated on correct meters must be clearly set out on the bills sent to the customers.

If a gas company fulfills the above requirements and in doing so deals with its customers in accordance with reasonable rules and regulations, adequate and proper service will be provided. These general rules of practice, however, ought, in the Board's opinion, to include a sufficient amount of educational advertising as will enable customers to make the most efficient and economical use of the product which the gas company sells.

With the above recommendations which affect both the customers and the company, the complaint will be dismissed.

An order will so enter.

Dated January 11th, 1916.

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"APPENDIX A."

REPORT OF JOINT COMMITTEE ON CALORIMETRY.

1. The first commercial distribution of artificial gas for illumination was in open luminous flames, and quite naturally its quality was stated in terms of the most convenient unit at hand—the candle. With the introduction of the much more efficient mantle burner, and the increasing use of heating devices, the heating value of the gas became important. As a result, scientific men in both Europe and America have recognized that to continue the use of the candlepower (illuminating) standard was, for modern conditions, illogical and unsatisfactory, and in lieu thereof have advocated the adoption of a heat unit standard. More than four years ago the Public Service Commission of the Second District of the State of New York noted the trend of development and started an investigation of the actual conditions existing throughout the Second District. This led to the appointment of a Joint Committee on Calorimetry, composed of representatives of the Commission and of the gas corporations of the State.

2. This Committee, after three years of continuous research and investigation, having had the assistance of the laboratories of the Commission and of tests made at sixteen gas plants in the State, and the results of numerous experiments conducted elsewhere to aid it in its conclusions, now makes its report.

3. The object constantly in mind has been the selection of a standard for artificial gas which will enable the consumer to obtain the most value for the least money, and will enable the company to obtain its profit at the smallest expense to the consumer. The interests of the consumer and the company are one. This one interest demands a standard which will fit in with present economic conditions, which will permit the most efficient use of modern invention and which will conserve resources instead of wasting them.

4. The yielding of the open flame burner, the only device requiring the gas to have an illuminating value, is the first reason for suggesting a standard based on the heating value. The mantle burner is from four to eight times as efficient as the open flame burner, and its use reduces the cost of lighting to the consumer. As is well known, the light is obtained by heating a mantle of rare earths to incandescence. The gas needs only heating value because the burner is merely a heater for the mantle.

5. As in all heating devices, the burner is adjusted so that the gas is completely burned and shows a blue or almost colorless flame. Consumers, if properly informed, would substitute mantle burners for open flames in practically every case. In addition to the greater economy,

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there is greater safety in many cases and more effective illumination always.

6. In addition to modern gas lighting devices which require heating value only in the gas, there is a rapidly growing demand for gas for cooking and heating purposes. Artificial gas is being supplied in increased amounts for melting, tempering, metal finishing, drying, gas engines and hundreds of other industrial uses. Inventors are actively at work designing apparatus which will greatly increase this use. Heat storage furnaces for heating buildings economically with gas are proposed. Indeed it seems to be true that it only needs the design of proper gas-using apparatus to make gas the most economic means of transporting the heat content of coal. Under such circumstances to give artificial gas an expensive and unnecessary illuminating value is illogical and indefensibly wasteful.

7. The illuminating quality in gas, which, with the disappearance of the open flame burner becomes unnecessary, may become a costly feature if it must be added to the gas by a special process of enrichment. This enrichment is usually made by means of a petroleum oil which for a number of years was worthless for anything else and consequently was very cheap. But the enormous growth in the demand for gasoline for automobiles and motor boats has stimulated chemists to invent processes by which the enriching oils heretofore used by gas companies can be turned into light oils suitable for internal combustion engines.

8. Inventors of oil engines are perfecting their devices rapidly, which results in much more extended direct use of oil for power generation. Oil used in this way commands a higher price than when used for gas enrichment. The United States and other governments are resorting to increased use of oil fuel for war vessels, and their needs are so paramount that price is not a critical factor. (Reference: "The Production of Petroleum in 1911," U. S. Geological Survey, 1912.)

9. This sudden demand for enriching oil products by the people for pleasure and industrial purposes, and by governments for power purposes, and the consequent rise in the selling prices, has within a year increased the cost of manufacturing water gas from 10 to 15 cents per thousand cubic feet. In addition, there is every reason to believe that the present price of oil is by no means the maximum, so that cost may operate in the future to require that enrichment be kept to a minimum. It was the presence of a large and cheap supply of enriching oil that made water gas commercial after the manufacturing apparatus had been made practical from 1877 to 1882. It is probable that the high price of enriching oils will make carburetted water gas useful chiefly for peak demands and as a reserve to retort gas and oven gas which need no enrichment if heating value only be required.

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10. The present rise in the price of oil would result in a condition seriously affecting the price of gas to the consumer if it were necessary for artificial gas to continue to have the present high illuminating value. Fortunately, the availability of the mantle burner modifies the seriousness of the situation. It may be argued that gas oil has risen in price before and afterward dropped. It must be added, however, that the price never returns to its previous low figure. Moreover, as shown above, the present rise is due to plainly apparent and quite natural causes, and it does not appear that these causes will abate in force.

11. In passing it may be stated that water gas must be enriched to be practical for community use. Retort gas (so-called "coal gas") has ample heating value and illuminating value to be distributed without enrichment to the community. Run of oven gas (by-product from coke ovens) has a large heating value without enrichment, but in candlepower is materially lower than retort gas.

12. It should also be noted that whatever reasons there may have been in the past for different standards for coal gas, mixed gas and carburetted water gas (16, 18 and 20 candlepower in New York State, Second District), they certainly are without force now, and only one standard is necessary or desirable.

13. Mere increased cost, though important and almost compelling, is not alone the cause for a change from a candlepower to a heat unit standard. As a matter of fact, when this Committee was appointed this feature could not have been in any degree a reason for changing the standard. The present standard actually retards the extension of gas service and as a direct consequence retards the development of communities.

14. Present development in gas distribution falls into two classes—first, distribution in comparatively densely populated large territories such as cities, with closely attached suburbs; and second, distribution of gas from one large central plant to a number of more or less distant communities with intervening territory in which there is little or no demand for gas supply. In either case the present candlepower standard is a burden. This is for the reason that because of temperature and pressure changes and friction in mains a part of the enrichment added to a gas to give it illuminating power drops out during transmission, and the loss becomes more and more serious as the distance of transmission increases. Higher pressures are necessary if the gas is to be transmitted economically for a long distance, and it is impossible to avoid some exposure to low temperature. As a result, either the gas must be given excessive candlepower at the plant, or it must be enriched after transmission so that the gas distributed after transmission may be up to standard. In either case it is sometimes difficult to make the operation.

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of the system satisfactory and the cost increases to an amount which makes such distribution often commercially impracticable.

15. Within single areas or communities, extension of service is possible so far as the present law is concerned, which requires inspections to be made about a mile from the works. This does not mean, however, that the same quality of gas can be supplied economically at the center and on the outskirts. The company undertaking to give standard service at all points must of necessity spend much more on its manufacturing and distribution cost because the average candlepower must be higher in order to make up the loss.

16. In the case of one large central plant distributing gas to a number of more or less distant and separate communities, the burden is especially heavy, for but one quality of gas can be ordinarily distributed from the plant. The long distribution system with its higher pressure and exposure to low temperature entails a very great loss in candlepower during transmission. In addition, the operation is likely to be difficult, because the enriching oils which condense in the system must be taken care of in larger pipes, traps and other devices, and the labor cost of operation is increased on account of the maintenance and operation of these extra devices. With the increased cost of enriching oil it is probable that such extended distributions will not be possible without a serious increase in the selling price.

17. Too small a community cannot support a gas plant of its own, if first-class service is to be given, ample financial support secured and adequate business and engineering superintendence supplied. For a long time the same conditions obtained in the supply of electricity, but the problem of supplying the smaller community has been solved by the development of high-tension, long-distance transmission of power. By this means any number of small communities and intervening farm territory can be served from one large central station. High-pressure gas distribution bears the same relation to the gas industry as high-tension transmission bears to the electric industry.

18. As shown later, the loss in heat units in transmission due to pressure or low temperature is very much less than the loss in candlepower. A heat unit standard not very different from the heat unit value of gas at present supplied would permit gas distribution over long distances under pressure at a loss which would be in no sense burdensome. Such a result would permit, as soon as development could take place, gas service to many small villages and towns which it is quite impossible to supply under present conditions.

19. A further reason why a change from a candlepower standard to a heat unit standard is desirable rests on a broad economic policy. Even though oil were not increasing in price the present standard spells waste.

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It is a waste of resources and it is wasteful of money. Conservation of resources would demand that there should be no unnecessary resort to the use of oil for gas enrichment. It is wasteful to maintain a standard beyond what is required for efficiency and when the standard means an unnecessary high cost. The public wants the best gas for the least money, and it is to the business advantage of the company to supply the demand. The present standards, under existing conditions, do not assist in attaining this desirable end.

20. Summarizing, then, the movement toward a heat unit standard is based on three important factors:

1. Modern appliances for the use of gas require that it have heating value only. The open flame burner is rapidly disappearing on account of its inefficiency and expense.
2. The present candlepower standard seriously impedes desirable distribution in extended communities and for long distances, and as a consequence retards community development. The rising price of enriching oils adds to the difficulty.
3. The present standards are wasteful of resources and unduly burdensome on the consumer and the company.

21. In order to obtain accurate information on which to base the choice of a proper standard, particularly with reference to the needs of New York State, the Committee turned to a number of gas corporations of the State for assistance. Laboratories for calorimetric measurements were established at sixteen different plants of the State and regular daily tests started. The instruments were checked first at the laboratory of the Public Service Commission at Albany. The cost of the apparatus and the expense of the tests were all carried as operating expenses of the plants where the tests were made. Constant attention had to be given by the Company's officers and their employees to the investigation, and the expenditure of time and money was not small. Results of this work make up the most valuable data that the Committee has in this report. In Appendix B will be found tabulations and curves showing the results obtained by the various companies with comments and discussion in considerable detail (see also Appendix C). The monthly reports of the companies summarizing their daily tests when received by the committee were scrutinized closely for errors and critical features. Every effort possible has been made by the Committee to make sure that the work was being done with uniformity and accuracy. The co-operation of the traveling gas inspectors of the Commission was of marked assistance in this respect. As a final test on this point, a demonstration was held at Amsterdam, N. Y., at which all the calorimeter operators of the various companies making tests were present. This

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gave an opportunity for a further demonstration in regard to uniformity and accuracy. The Committee feels confident that the results are accurate within one per cent.

22. Certain other important facts demonstrated by this experimental work should be mentioned.

23. It is known that a calorimetrical laboratory can be established at comparatively small expense.

24. Calorimetric measurements can be made with great accuracy by men with no special scientific training except experience in and attention to proper operating directions.

25. The calorimeter as a practical instrument is more accurate than the photometer. There is no uncertain feature in connection with its use as there is with the type of burner and standard unit of light used with the photometer.

26. From the test results no law could be discovered showing a relation between the candlepower and the heat unit value of artificial gas. The Commission's preliminary investigation indicated this, but the results, involving 6,738 calorimetric and 9,167 photometric observations, obtained by the Committee make it a demonstrated fact. For this reason it would be very difficult indeed to state the heat value of artificial gas of a quality equal to the State standard for candlepower inasmuch as the companies generally distributed gas above the legal standard, in some cases as much as 17 per cent. For the information of the Committee, however, two plants were operated close to the State standard. As the results in Appendix B show, gas meeting the State standard of candlepower would have approximately a monthly average of 585 B. t. u. The question immediately arises as to whether this value should not be taken for the heating value standard of gas to be distributed in New York State. The several steps in the reasoning necessary to properly answer this question are important.

27. It is desirable that a new standard shall not differ greatly from the heating value of gas of the present legal standard. To have it materially less would require the distribution and use of a larger volume of gas in order to get the same useful effect. This in turn would necessitate radical changes in the selling price annoying to both consumers and companies without benefit to either.

28. To meet a heat unit standard of 585 B. t. u. means that most companies must enrich the product during a portion of each twelve months.

* * * * *

30. Any enrichment is expensive, and it has been shown above that it is becoming more and more so with the increasing price of oil. It is safe to predict that if the present price of oil continues, carburetted water gas will no longer occupy the important position that it has for some years

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past in the gas industry. Indeed, the idea is now taking firm hold that, owing to the oil situation, with the practically inexhaustible supply of gas coal now in sight, the gas industry must depend upon coal gas of some sort for the bulk of its output and use water gas as a reserve. In any case excessive enrichment is useless and unsatisfactory, especially in connection with modern gas appliances. Gas unnecessarily enriched interferes with manufacturing processes, and when distributed to the consumer deposits carbon in burners and mantles and, as heretofore stated, the illuminants drop out in transmission, especially under pressure and at low temperature. Other things being equal, it will be to the advantage of consumers and manufacturers if enrichment is reduced to a minimum.

31. As shown later, with the most modern horizontal retort settings and machine stoking, coal gas from high-grade gas coals and with high yields of gas per ton of coal, without enrichment varies in heat units from approximately 550 to 600 B. t. u. monthly average. If the general use of carburetted water gas as a staple product becomes impossible on account of the very high price of enriching oils, and must be replaced by retort or oven gas, and if the heat unit standard is set at such a point that the manufacturer will need the highest grades of coal in order to meet this standard or else be compelled to use high-priced enriching oils, it is obvious that the price of these higher grade oils will rise so that the very object of the change will be defeated. It is interesting to quote here from Bulletin 6 of the Bureau of Mines of the United States, published in 1911:

"In a consideration of the various means whereby more economical and more efficient use may be made of the fuels in the United States, the possibility of obtaining for the production of illuminating gas other and cheaper fuels than the Pennsylvania coals demands attention. For the Government, as well as for private corporations and the householder, there can be no more economical and efficient way of using some coals than through the medium of illuminating gas. In the stove, gas reduces the labor cost of heat production and lessens the drudgery of the kitchen; burned in the Welsbach mantle, it is an excellent and cheap illuminant. In addition, the coke that remains after the gas has been recovered furnishes a smokeless fuel that has about the same heating value as anthracite. Hence any investigations that will indicate how local coals through proper treatment may be substituted for the higher priced and rapidly vanishing Pennsylvania gas coals will bring about lower prices for both gas and coke, and will also aid to conserve for use in metallurgical processes the coking coals of Pennsylvania and of other States.

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"There are few well-developed coal fields in this country that furnish coal satisfying all the requirements of illuminating-gas manufacture. Most of the coal used hitherto has come from Western Pennsylvania, the quantity supplied by other fields being relatively small. The introduction of gas-coals from new or little-known districts, because of the lack of necessary testing stations and of scientific study of the complex process of gas manufacture, has been difficult."

32. We must, therefore, think that it would be inadvisable to set the standard for artificial gas so high that the best coals only could be used. The standard should be placed so that average coals may be used without enrichment, and thus give the very greatest economic value to the consumer at the lowest cost.

33. Certain methods of operation are now being discussed that may be desirable, or even become compulsory under conditions which seem to be approaching. The disposition of the coke resulting from the manufacturing of coal gas has been in the past a serious problem to some companies, and at a time when coke was used in cooking ranges since discarded for more desirable gas ranges. For this and other reasons it may be desirable in the future to manufacture a mixed coal and carburetted water gas, using substantially all of the coke as fuel in the water gas sets. If this becomes a general practice it may be desirable to lower the standard. Coke oven gas in which the coal is carbonized primarily to obtain coke for industrial purposes and the gas a by-product is also being considered in many places. Run-of-oven gas would require excessive enrichment if the present standard was in force. It is quite probable that should this coke oven gas be distributed in larger quantities it would be desirable to reduce the standard. Present data from these various processes show that it might be necessary to fix the standard at 525 B. t. u. or even lower.

34. It is difficult indeed, in view of the uncertainty as to just how fast certain changes in the conditions governing gas manufacture and distribution will take place, and as to what the final situation will be, to determine the proper value at which to set the standard. It has been shown that some time in the future the standard may have to be 525 units or lower. It has also been shown that, at present, the monthly average, even with the best coals and highest grade plants, may be as low as 550 units. All plants, of various sizes and locations, cannot become highest grade plants, at least immediately, and the smaller plants never. The best coals are not available to all, and if the demand is increased the price will rise. Notwithstanding these facts it is believed that the standard adopted must be close to the heat unit value of the present standard gas.

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35. Taking all these conflicting factors into consideration, it is the judgment of the Committee that a total heat value not exceeding 570 British thermal units monthly average measured at the point where the gas leaves the manufacturing plant, corrected to a temperature of 60° F., and to a pressure of 30 inches of mercury, as measured by the rules of the Committee accompanying this report, is the standard which will best serve the interest of the people of New York State.

36. The standard suggested above is referred to the standard atmospheric cubic foot, i. e., at 30 inches barometer and 60° F. It will be perceived that the only time a consumer would get the standard number of heat units would be when his meter was at 60° F. and the barometer was at 30 inches. Such conditions cannot obtain, however, with localities at different heights above sea level and with meters located in all kinds of places giving different and varying temperatures. Therefore, some average conditions must be chosen. These might be the average annual barometer and temperature if they could be obtained for each locality and a "local cubic foot" might be fixed on these terms. All such "local cubic feet" could then be required to have the standard number of heat units. This would be possible for a group of localities not varying too much from a certain average altitude. It would be very inconvenient, however. A certain mass of coal gives a certain mass of gas at best economic yield, and the volume of the gas is solely dependent upon pressure and temperature. Therefore, if a "local cubic foot" is used, operators would operate differently at different altitudes and temperatures, even though using the same coals, oils and machinery. A comparison of detail methods of operation, the study of proper amounts of oil and steam, temperature of various parts of the sets or benches and other features, are sufficiently complex now without making them more so by introducing accidental atmospheric conditions. There could not be even a mere comparison of results by State authorities and others interested, in order to increase efficiency, until the results were brought to a common basis. In a State having largely different altitudes several standards might be required owing to the impossibility of making a uniform commercial gas in all cases. The operators would still have to observe the daily barometer and temperature, and make corrections to the "local cubic foot." The only suggested advantage discernible is that the consumers everywhere throughout the region or State in question would get the same number of heat units in the yearly average "local cubic foot." What they get from day to day will vary by the same amounts under any system. All features considered, it will be much more satisfactory to fix the requirement in terms of the atmospheric standard cubic foot, i. e., at 30 inches barometer and 60° F. The average "local cubic foot" sold will then contain slightly different numbers of heat units according to the height of the locality above the sea and to the climatic conditions. In New York State these differences are unimportant.

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37. The conditions governing the use of the standard are important. Gas manufacture is not an exact science, but is a complex operation including a number of distinct processes. Quality of coal, methods of firing, temperature of retorts, the human factor, the failure or breakdown of parts of the plant, and other factors not easily controlled, make it impossible for a gas company to deliver an absolutely uniform product. This points to the necessity of applying the standard as an average for a reasonable length of time. A month has been adopted elsewhere, and is recommended for New York State. If a company falls below the standard for a few days it will then be necessary for it to produce above the standard, at an economic loss, in order to have its monthly average satisfactory. In order to protect the public against improper management by which there would be wide departures from the standard, should a minimum value be set? It is not necessary that this minimum be set too close to the monthly average, as there is a financial loss to a company if it departs too far from it. The cheapest and best operation for both company and consumer will obtain by a close adherence to the standard. A wide departure due to careless operating means an increase in operating cost which will not be to the company's profit. A 5 per cent. deviation for not exceeding three consecutive days would be adequate protection to the consumer. In extraordinary conditions due to failure to obtain supplies or to accident in the plant, the Commission might properly suspend the operation of the standard in its discretion.

38. As a matter of fact, even a properly fixed minimum is of little practical importance. Well-managed companies would never reach it except under circumstances absolutely beyond their control. The saving and satisfaction in operating close to the monthly average is very great and induces good management. A management continually inefficient and incompetent would be exposed in so many ways that a change would eventually come through reorganization or new ownership.

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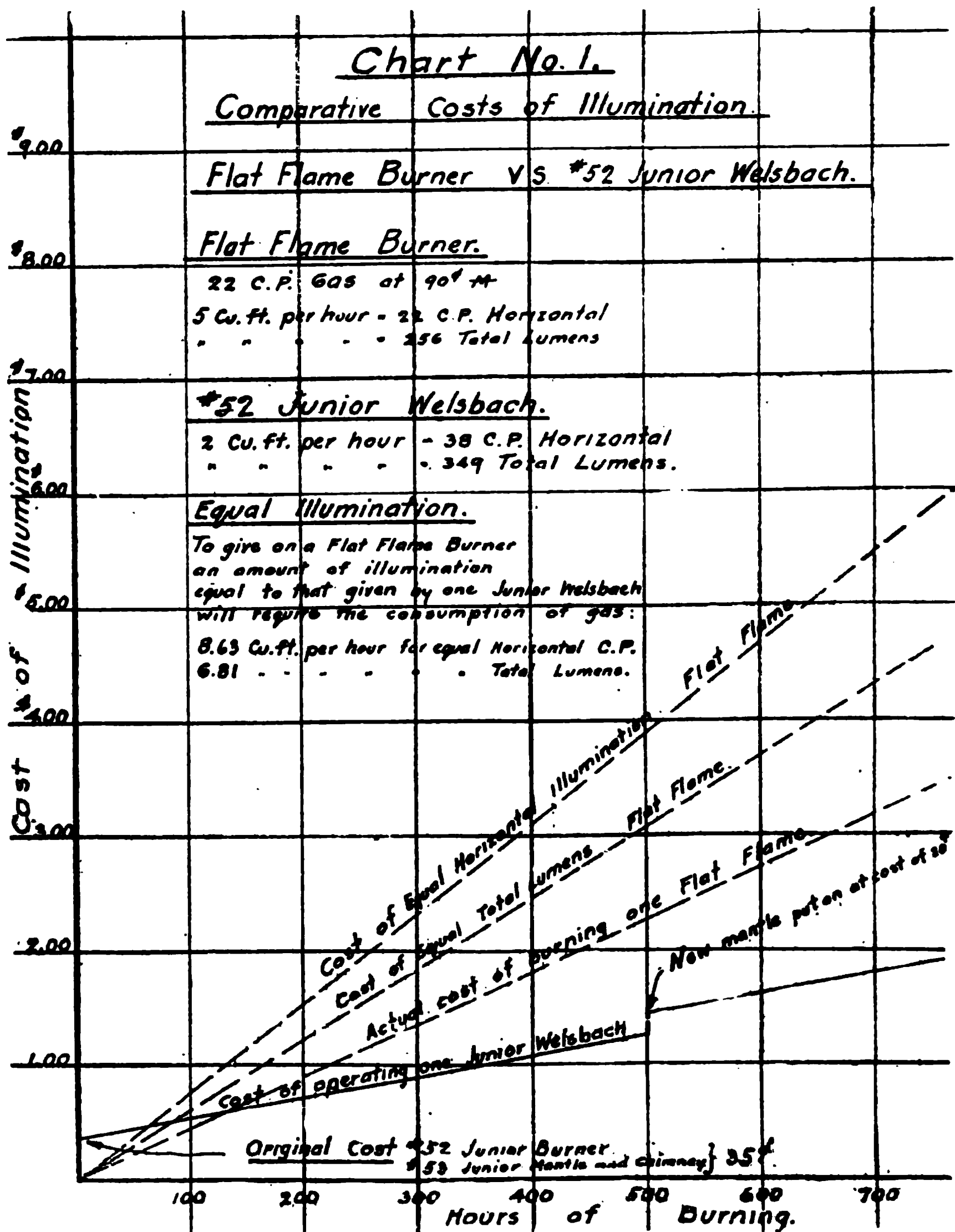
40. It is reasonable to ask what disadvantage there will be, if any, to persons using flat flame burners if a standard is fixed according to heating value only. It is fair to exclude from consideration all persons who continue to use flat burners through indifference to their own interests. That a smaller and smaller number of people are doing this is evident from the results reported by gas companies in regard to the reduction in the number of consumers using open flames. Mantle burners have become so cheap and the saving is so great that in a short time no one will use open flame burners except for some peculiar reason. The cases will be remarkably few where open flame burners will be thought desirable, but for those who feel that they must use them it may be stated posi-

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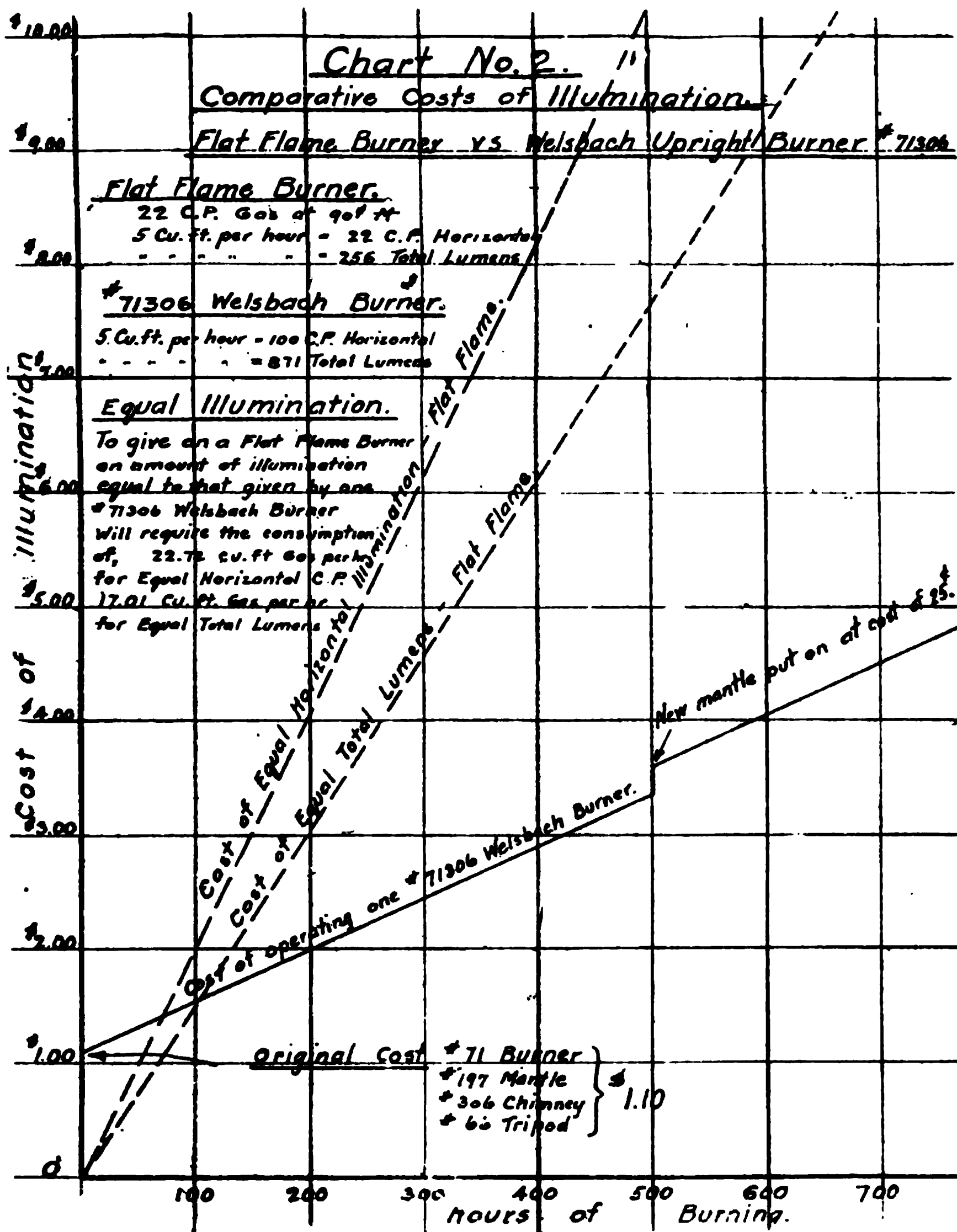
tively that any artificial gas having the heating value recommended in the above standard would have sufficient illuminating power, though at times lower than at present, to make the gas useful in locations suitable to open flame burners. The use of a very small percentage of the gas for such a purpose should not prevail against the general usefulness of the whole product.

41. The Committee recommends, therefore, that no candlepower standards be considered in connection with the heat unit standard heretofore recommended.

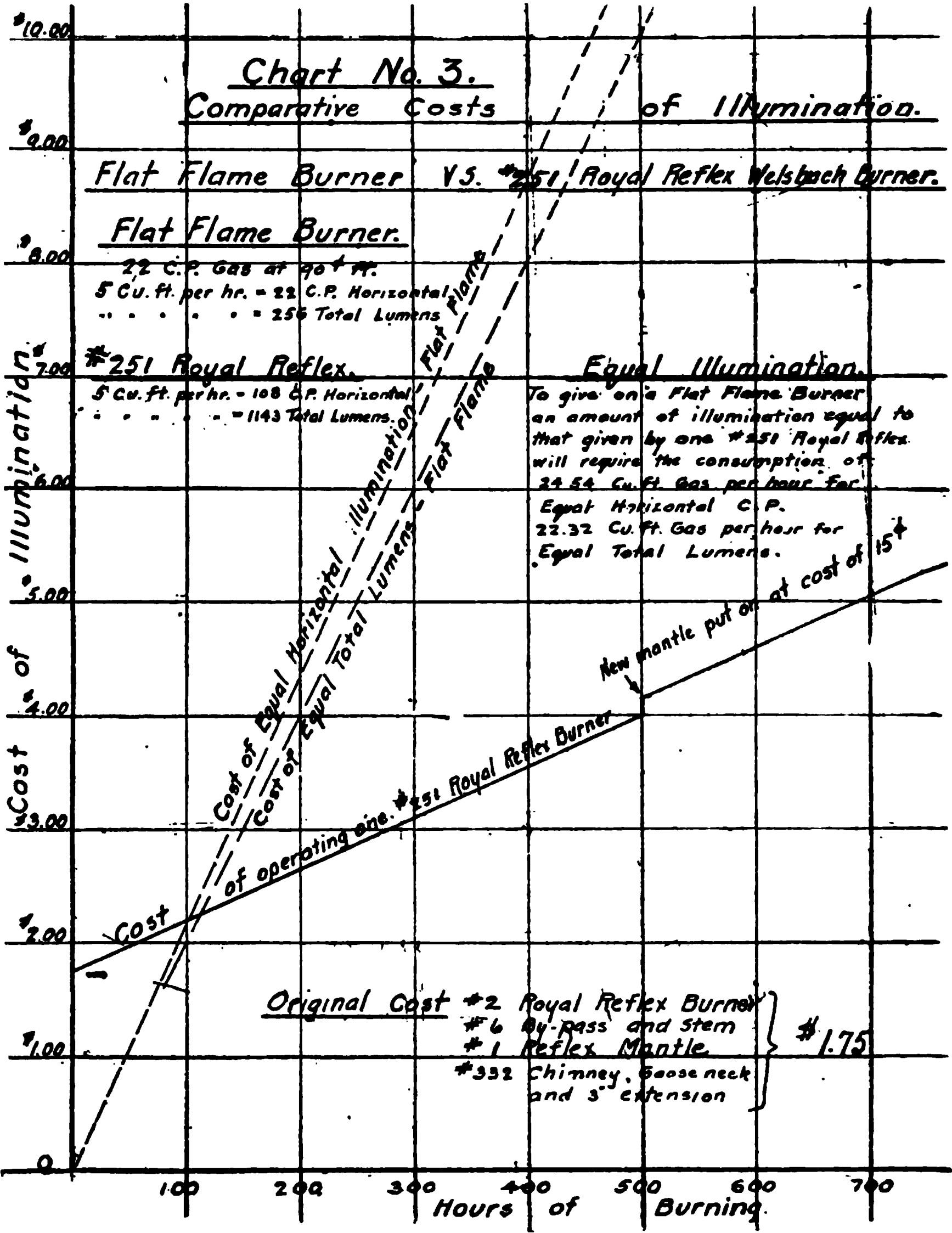
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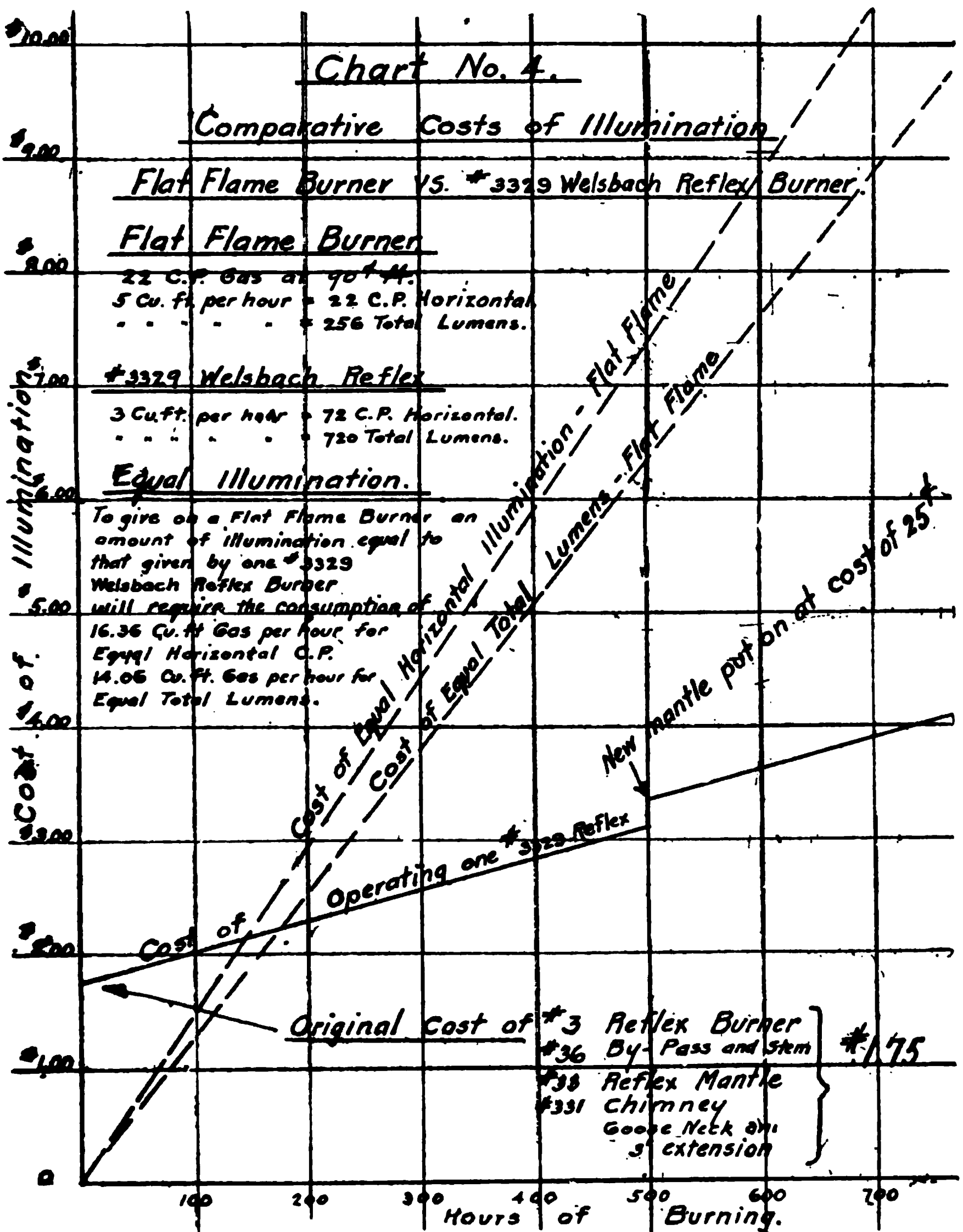
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N. Y. C. & H. R. R. R.—Re-location of Station at Dumont.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

IT IS ORDERED that the complaint in this proceeding be, and it is hereby, DISMISSED.

Dated January 11th, 1916.

No. 320.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY FOR PERMISSION TO RELOCATE STATION AT DUMONT, NEW JERSEY.

A petition was submitted, signed by seven hundred residents of Dumont asking the Board to approve the application of the New York Central and Hudson River Railroad Company to relocate its station at Dumont. An opposing petition was submitted asking that the station be retained at the present site. In view of what appears to be the overwhelming demand on the part of the people of the Borough, and the failure on the part of the objectors to show that adequacy or safety of service will be reduced by the change, permission to relocate the station is granted.

Albert C. Wall, for petitioner.

William B. Mackay, Jr., for objectors.

The New York Central and Hudson River Railroad Company makes application for permission to relocate its sta-

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tion at Dumont at a point 872 feet north of the present site. The proposed new station will be on the west side of the tracks. The present station is on the east side of the tracks. The reasons given for the removal of the station are the inadequacy of the present structure for the needs of the locality, and inability to build a station sufficiently large at the site of the present station to accommodate the needs of the locality, because the Railroad Company does not own sufficient land at the present site and is unable to acquire additional land thereat. It proposes to construct a fourth track, which would make the space owned by it available for a station at the present site still more adequate.

The removal of the station is opposed by the objectors on the ground that the present site is located in the business district of Dumont, has been so located for many years and its removal would be likely to affect property values in that immediate vicinity. A plan of the railroad showing the site of the proposed station and of the old station was presented in evidence.

The new station is to be located on Madison Avenue, which is a wide thoroughfare and crosses the railroad. It is partly built up on both sides. The old station is located at Quackenbush Avenue, which does not cross the tracks. The new station is to be a commodious one with a suitable driveway and approach and will be nearer the center of the town than the present one. The cramped condition of the present station does not permit of as satisfactory approaches thereto as the new one.

A petition signed by seven hundred residents of Dumont, requesting that the Board approve the application to relocate the station at the proposed site, was presented in evidence. An opposing petition, asking that the station be retained at the present site, signed by fifty residents, was

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also put in evidence. The former petition was signed by the Mayor and all the members of the Borough Council. The Mayor of the Borough and other witnesses testified that the Madison Avenue section at the place where it is proposed to build the new station has as many places of business as the Quackenbush Avenue section and that the development of the town is progressing with greater rapidity in the former place.

It also appears that the present station is within three-quarters of a mile of the next station south, while the next station north is a mile and a half from the present station. The location of the new station at the proposed site, 872 feet north of the present one, would tend to equalize the distance between it and the next adjoining stations north and south.

This Board recently held, in reference to the proposed removal of a station at Hanford, in the case of Scoble vs. New York, Susquehanna and Western Railroad Company, that the choice of the actual site for a railroad station is properly a function of the management of the railroad company and should not be interfered with, unless it is established that adequate service or the safety of the public is in danger. It is apparent that greater facilities for service and greater adequacy of service will be afforded at the new site than can be furnished at the old station. While testimony was introduced by the objectors to the effect that some high school children, who come from outside the Borough, would have to cross the tracks from the west side to the east side to reach the High School and that this might constitute an element of danger, there was no testimony to show what express trains, if any, passed this point at the times when these pupils leave trains in the morning and take them in the afternoon. It further appears that a flagman warns persons leaving and board-

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ing trains, at the present station, of the approach of trains. With the same service at the new station the element of danger, if any, will be eliminated.

In view of what appears to be the overwhelming demand on the part of the people of the Borough and the failure on the part of the objectors to show that the adequacy or safety of service will be reduced by the change, permission to re-locate the station at the Madison Avenue site will be granted.

Dated January 12th, 1916.

ORDER.

This matter coming on upon application of the petitioner and objections by various residents of the Borough of Dumont to the prayer of said petition; and the matter having been duly heard and submitted by the parties, and full investigation of the matters involved having been had; and the Commission having on January 12th, 1916, made and filed a report containing its findings of fact and conclusions thereon, which report is made a part hereof;

IT IS ORDERED that the New York Central Railroad Company be permitted to discontinue the passenger business now carried on at Quackenbush Avenue Station in said Borough, and to abandon the said station conditioned upon the establishment of a new station, about two hundred and fifty feet north of Madison Avenue in said Borough, for its passenger business.

Dated January 18th, 1916.

Wildwood Gas Co.—Discontinuance of Service.

No. 321.

WILDWOOD GAS COMPANY—IN RE NOTICE OF DISCONTINUANCE
OF SERVICE.

The Board considers it unreasonable to require payment of a full month's minimum charge where a customer begins his relations with the company a few days before the meter reading date. The printing of a rule on the back of a bill is not sufficient notice when the company proposes to discontinue service. In the judgment of the Board the Wildwood Gas Company should give at least three days' notice in writing of its intention to discontinue service before service is discontinued.

Theodore J. Grayson, for the Company.

George W. Rogers and *Joseph Rittenhouse*, on their own behalf.

This matter arose through the complaint of George K. Hale, a customer of the Wildwood Gas Company, who alleged that the Wildwood Gas Company discontinued service without notice.

Informal investigation by an Inspector of the Board led to a recommendation as follows:

"The company should immediately adopt a system whereby a notice will be sent out to each customer, notifying him of the time when service will be discontinued. Such a notice should allow a reasonable time before going into effect, and in a seasonal resort such as Wildwood, it is thought that three days would be a reasonable time to elapse before carrying out such a notice."

A copy of this recommendation was sent to the Wildwood Gas Company, which took exception thereto. On the issue thus joined hearing was held, of which the company was given notice and at which it was represented.

Wildwood Gas Co.—Discontinuance of Service.

The complainant rents an apartment at 230 East Young Avenue, Wildwood, from June 15th to September 15th. He took possession of this apartment on June 19th, 1915, and deposited 50 cents in the gas meter. On August 5th an employee of the company presented at the complainant's residence a bill for 30 cents, stating that unless it was paid the gas would be turned off. The complainant was at home at the time, and as no satisfactory explanation was given to him for presentation of the bill, payment was refused, and the gas was immediately turned off and while food was being cooked. When the complainant called at the office of the gas company and asked for an explanation, he was told that in the period from June 21st to June 23rd, the time the meter was read, he had burned only 45 cents worth of gas, but he would be required by the rules of the company to pay a minimum charge of 75 cents for the month, the 30 cents being the balance due to make up the amount of minimum charge. The 30 cents was then paid under protest and the gas was turned on in a little less than one hour's time.

The complainant makes three allegations. He denies:

1st. "The company's right to demand a deposit on a slot gas meter."

2nd. "To make a monthly charge for gas, as there is no loss when gas is not consumed."

3rd. "To come into his apartment and turn off the gas while cooking food."

Based on the above allegations, Mr. Hale contended that, first, he should be reimbursed for the 30 cents paid under protest, which was required to make up the minimum charge, and second, the sum of 85 cents, which was the cost of the food which was spoiled due to the interruption of gas service.

With reference to the damages amounting to 85 cents claimed by the complainant, the Board is without power

Wildwood Gas Co.—Discontinuance of Service.

to award reparation, and so much of the complaint as refers to damages is, therefore, dismissed. Only the Courts can award damages.

With reference to the minimum charge of 75 cents per month and the billing of the balance required to make up the minimum charge, the Board is already on record as approving the principle of the minimum charge. The Board, however, believes that this minimum charge, when based upon monthly service, should be charged pro rata for the month. It appears from the complainant's statement that the apartment in question was rented from June 15th to September 15th. His status as a customer of this company, therefore, commenced on June 15th, and if the meter was read on June 23rd, as it appears to have been, the company was entitled to 8/30 of the minimum charge in case the amount of gas used was less than 75 cents worth. From June 23rd to corresponding dates in July and August, the company was entitled to at least the sum of 75 cents for each monthly period. The Board considers it unreasonable and, indeed, absurd to require the payment of a full month's minimum charge in a case where a customer commences his relations with a company a few days before the regular meter reading date. It appears from the above complaint that the company's rules require the payment of the full amount of the minimum charge for any fraction of the first month when a customer first becomes such, and for any fraction of the month in which a customer terminates his relation with the company. The Board considers this rule or regulation of the company to be unjust and unreasonable, and an order requiring its modification will be entered.

Counsel for the company contended that it was the company's rule and practice to give ten days' notice, and called attention to the form of bill which contains on the back a statement as follows:

Wildwood Gas Co.—Discontinuance of Service.

"3. In case of default of payment for gas consumed, within ten days after a bill is rendered, and in case of a leak or injury done to a meter or pipes within the premises of any customer, the supply of gas may be stopped until the bill is paid or the necessary repairs are made."

R. Forest Rich, cashier and manager of the company, testified that the company does not have a separate cut off notice.

The Board does not consider the printing of the rule on the back of a bill sufficient notice when the company proposes to discontinue service. The notice as printed provides that the company "may" cut off service under certain conditions, but this can hardly be construed as being a sufficient notice of the company's actual intention to discontinue service to any individual.

In the judgment of the Board the Wildwood Gas Company should give at least three days' notice in writing of its intention to discontinue service before service is discontinued. The Board finds and determines that in discontinuing service without giving such notice the Wildwood Gas Company does not furnish safe, adequate and proper service.

An Order requiring notice to be given will be entered.

Dated January 18th, 1916.

ORDER.

This case having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is by reference thereto made part hereof, the Board of Public Utility Commissioners

Wildwood Gas Co.—Increased Charges.

HEREBY ORDERS the Wildwood Gas Company to modify its rule or regulation so that instead of subscribers to its service being charged the Company's full monthly minimum charge for each month during which service is supplied, the said subscribers shall be charged the full monthly minimum for each entire month of service and those portions only of the minimum for the first and last months of service (where such service is not begun and ended on the first and last days of the month) as the number of days during which the service is connected are proportionate to the number of days in said month or months.

The Board of Public Utility Commissioners finds and determines that the present practice of the Wildwood Gas Company as to discontinuance of service is unjust and unreasonable, and FURTHER ORDERS the Wildwood Gas Company not to discontinue service to any subscriber to its service without giving to such subscriber at least three days' notice in writing of its intention to discontinue service.

This Order shall become effective February 10th, 1916.

Dated January 18th, 1916.

No. 322.

IN THE MATTER OF PROPOSED INCREASE, CHANGE OR ALTERATION IN CHARGES BY THE WILDWOOD GAS COMPANY.

Theodore J. Grayson, for the Company.

Under date of October thirtieth, one thousand nine hundred and fifteen, the Wildwood Gas Company filed with the Board a statement of its intention to put into effect, as of November 1st, 1915, a charge of One dollar (\$1.00) for turning on gas for each customer and an additional charge

Wildwood Gas Co.—Increased Charges.

of One dollar (\$1.00) for turning the gas off. In connection with these charges it was proposed to discontinue the minimum monthly charge of seventy-five cents.

On November 1st, 1915, the Board suspended, until the 1st day of February, 1916, the increase, change or alteration proposed by the company, and fixed the 16th day of November, 1915, for hearing upon the question whether the increase, change or alteration proposed is just and reasonable.

A copy of the Board's Order of suspension was served on the Attorney of the Wildwood Gas Company and the said Company was represented at the hearing held upon November 16th. The testimony submitted at the hearing on behalf of the Company was substantially the same as that submitted to the Board at the hearing which preceded the Order of the Board establishing for the Wildwood Gas Company the minimum charge of seventy-five cents per month, which is now being charged.

After full consideration of all the facts the Board does not see any reason for changing its conclusions upon which its Order, fixing the present minimum charge, is based, or for substituting for such minimum a charge for turning off and on.

The Board FINDS AND DETERMINES that the Wildwood Gas Company has not shown the increase, change or alteration proposed by it to be just and reasonable, and the Board DISAPPROVES the same.

Dated January 18th, 1916.

Delaware River Water Co.—Reading Meters.

No. 323.

IN THE MATTER OF READING METERS AND RENDERING BILLS BY
THE DELAWARE RIVER WATER COMPANY.

ORDER.

The Board of Public Utility Commissioners, after hearing upon notice, finds and determines that adequate and proper service requires that the Delaware River Water Company shall read the meters of subscribers to its service who are supplied with water through meters, at least once every three months, and render statements of such readings to such subscribers within five days of such meter readings, and

The Board of Public Utility Commissioners, HEREBY ORDERS the Delaware River Water Company to so read the meters referred to herein, and to render statements of such readings within five days after the readings of such meters.

This Order shall become effective February 10th, 1916.

Dated January 18th, 1916.

No. 324.

W. T. ROYDS

VS.

WEST JERSEY & SEASHORE RAILROAD COMPANY.

For more than twenty-five years deliveries of freight have been made at North Grassy Sound. The north side of Grassy Sound has been built up largely by reason of that fact. It would require testimony of substantially changed conditions, or other new factors, to justify the discontinuance of the practice, and the serious inconvenience which would result therefrom. Adequate and proper service requires the resumption of the practice of delivering freight to the north side of Grassy Sound.

W. T. Royds vs. W. J. & S. S. R. R. Co.

W. T. Royds, in person.

G. M. Bacon, for respondent.

The petitioner, W. T. Royds, filed with this Board an informal complaint against the West Jersey & Seashore Railroad Company to the effect that the company had discontinued the practice of stopping trains and delivering freight at the north side of Grassy Sound.

The hearing of the matter was fixed for August 13, 1915, at the State House, Trenton. Testimony was taken and recommendations made that the company stop its *dollar excursion trains* at the north side and deliver freight to the north side at the risk of the consignee. This the company agreed to do. However, while the company did stop its trains as recommended, it did not adopt the practice of *delivering freight* to the north side at the risk of the consignee; objected to it, and requested a further hearing.

The Board afforded this and the matter was again heard on Monday, November 22, 1915, at Camden, New Jersey.

The conditions at Grassy Sound are substantially these: The station is a non-agency station designated as "Grassy Sound," not *north* or *south* Grassy Sound; the company located the station on the *south* side, which in character is merely a shed; a platform originally wood, now cinder, is on the north side; a bridge connects the *north* and *south* sides of the sound upon which the tracks of the company are laid; no access until recently existed between the north and south sides other than on the tracks across the bridge.

The company, under these conditions, and for more than twenty-five years delivered *prepaid freight*, both interstate and intrastate, to the north and so also the *south* side of Grassy Sound. While this practice continued, Grassy Sound became *built up* on the *north* as well as the *south* side; thirty-six houses on the north and twenty-four on the

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south (Tes. p. 8). The number and quantity of shipments to the *north* side approximately equaled those to the *south* side; (Ex. R-3); the petitioner himself receives from twenty-five to thirty tons per annum (Tes. p. 2).

The company, evidently with the view of justifying the withdrawal of a facility theretofore afforded, that is to say, the delivery of freight to the *north side* of Grassy Sound, constructed a foot-walk four (4) feet wide along the entire length of the bridge from the north to the south side, a distance of six hundred feet, and furnished a truck with which freight could be carried from the south side to the north side.

The petitioner contends that it is a hardship for the company to compel him and those living on the north side of Grassy Sound to truck freight across the bridge on a foot walk from the south to the north side, a distance of eight hundred feet, (Tes. p. 13), especially in view of the fact: first, that the same risk with respect to the delivery of *prepaid freight* on the south side exists as on the north side; and second, the inconvenience to the company, if any, is merely the stopping of its freight train on the north side.

The company, however, contends that it is justified in withdrawing the service heretofore afforded mainly for these reasons: First, because to accept interstate shipments to any point or destination other than a designated station is in violation of Interstate Commerce rules; second, the delivery of freight to the north side is impracticable; and third, the construction of the foot-walk and the furnishing of a truck is a reasonable substitute for the withdrawal of the service heretofore afforded.

The provisions of Chapter 195, Laws of 1911, which empower this Board to require a continuance of the service heretofore afforded, is found in Section I, 15:

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"The Board shall have general supervision and regulation of, jurisdiction, and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this act."

And again in Section 17, (b) :

"The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined:

(b) To furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so."

Taking up the first reason advanced by the company, namely, that to accept interstate shipments to any point or destination other than a designated station, violates the interstate commerce rules, it appears that it is not, as might be inferred from the wording thereof, based upon the claim that a rule promulgated by the Interstate Commerce Commission would be violated. No applicable rule has been promulgated by that body.

The reason is based upon the contention that because the station is designated as "Grassy Sound" and not "North Grassy Sound" the delivery of freight at North Grassy Sound would involve the acceptance of shipments to a point or destination other than a designated station, and that this would be contrary to the claimed trend of the decisions of the Interstate Commerce and State Commissions.

Our attention has not, however, been called to any decision, the reasoning of which would, upon the facts before us, make the delivery of freight on the north side of Grassy Sound, violative of any principle of law or sound practice.

For more than twenty-five years deliveries of freight have been made at North Grassy Sound. The north side of Grassy Sound has been built up largely by reason of that fact. It would require testimony of substantially changed conditions, or other new factors, to justify the dis-

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continuance of the practice, and the serious inconvenience which would result therefrom.

As to the second reason, namely, that the delivery of freight to the north side is impracticable, the difficulties encountered by the company can probably best be stated by referring to the testimony of witness James Buckelew on behalf of the company (Test. p. 39).

"Q. Assuming that this was not designated as a station; that is, assuming that this commission doesn't require us to establish two stations within one thousand feet of each other, what would you have to do in practice to comply with the request made by Mr. Royds which is that this freight shall be put off there, and assume also that every other person who lives on the north side would have the same right as he has; what would you have to do to comply with such an order?

"A. First of all, we could not have the agents manifest or mark or do anything to indicate that the freight was to go off on the north side of Grassy Sound.

"Q. Why not?

"A. That is a pretty hard question to answer. That is due to the necessity to have it listed as a station, because there are thousands of agents billing to points——

"Q. That is why, because it isn't down as a station?

"A. Yes.

"Q. How would your conductors know who the thirty-four or thirty-five people are who live on the north side of Grassy Sound and who might be expecting freight?

"A. The conductor who runs there every day, he would get to know them gradually if they came there in the spring, but when an extra man goes on he wouldn't know where the freight went.

"Q. Then what is the reason, Mr. Buckelew, from a railroad standpoint, that you think it is impracticable to do what Mr. Royds wants you to do?

"A. First, was the fact that stuff couldn't be billed there unless it was listed in the station books, and the tariffs, and that is not done, and the conductor to unload there, because he knows the man lives on the north side, then we would have to keep the conductors supplied with a list of those names; that would be the only way I know of. The regular conductor, if he ran there every day of his life, would know every man who lived on the south side——"

These difficulties, however, are more imaginery than real. The information as to the consignee, character of the

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freight and destination is always furnished to the company by the shipper. Shipments for North Grassy Sound could be so tagged or marked and moreover indicated on the way-bills accompanying the shipments, which way-bills are delivered to the conductor. There is, therefore, no more reason why confusion should exist with respect to freight for North Grassy Sound than for freight to any other station. The conductor would have the same information regarding the assortment of freight as for any other station. At any rate, this appears to have been the practice of the company for more than twenty-five years and certainly this reason does not warrant its discontinuance.

As to the third reason; namely, that the construction of a footwalk and the furnishing of a truck is a reasonable substitute for the withdrawal of the service theretofore afforded, the Board cannot agree with the company.

The service heretofore afforded was the delivery of prepaid freight on the platform of the north side of Grassy Sound. The service offered as a substitute is the carrying or trucking by the consignee of freight across the bridge from the south side to the north side, a distance of eight hundred feet. This may be dismissed with a word. Certainly service which requires the consignee of freight shipments to carry or truck freight a distance of eight hundred feet when heretofore freight has been delivered to the point without the carrying or trucking, is not a reasonable substitute and especially is this so when this facility has been offered for more than twenty-five years. It amounts to and is a withdrawal of a facility heretofore afforded and not the substitution of a reasonable substitute. The idea of a substitute is the same thing; that which takes the place of; merely a change and not that which imposes an additional hardship or inconvenience. It cannot be con-

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tended that the service offered is a *reasonable substitute* for the service heretofore afforded.

In the judgment of the Board adequate and proper service requires the resumption of the practice of delivering prepaid freight to the north side of Grassy Sound and an order to that effect will enter.

Dated January 18th, 1916.

ORDER.

This case having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is by reference thereto made part hereof, the Board of Public Utility Commissioners.

Hereby finds and determines that the provision of adequate and proper service requires the resumption of the practice of delivering prepaid freight to the north side of Grassy Sound, and

HEREBY ORDERS the West Jersey & Seashore Railroad Company to resume delivering prepaid freight to the north side of "Grassy Sound."

This order shall become effective February 14, 1916.

Dated January 18th, 1916.

Township of Mantua et al. vs. New Jersey Gas Co.

No. 325.

TOWNSHIP OF MANTUA, ET AL.

VS.

NEW JERSEY GAS COMPANY.

In determining the cost to reproduce the utility's property the Board adds to net cost of various items amounts ranging from 5% to 35%, the average being 15.11%. An allowance is made for expenses incurred in connection with the purchase and holding of land until such time as the plant can be put in operation.

Deductions are made for cost of plant capacity built in excess of reasonable requirements of the communities served. Unused services equal to an excess of 15% beyond the number of meters in use held to be reasonable and their value is allowed.

Allowances are made for organization and legal expenses and for "development expense" including cost of advertising, soliciting and demonstration. Allowance is refused for unearned depreciation covering period prior to purchase of plants by the company; the plants having been taken over at their value at the time. A comparison with other companies indicates operating costs to be reasonable. The return to the company at its present rates does not appear to be in excess of a reasonable return upon the fair value of its property used and useful in supplying service to the public. Complaint of unreasonable charges is dismissed.

Oscar B. Redrow, for the complainant.

Norman Grey and *Theodore J. Grayson*, for the respondent.

Frank H. Sommer, Counsel, and *Grover C. Richman*, Assistant Counsel, for the Board.

The Township of Mantua, Township of East Greenwich, Township of Glassboro, Borough of Wenonah, Borough of Pitman, Borough of Clayton, Borough of Pittsgrove, and Town of Woodbury Heights, all in Gloucester County, the

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Borough of Elmer in Salem County, and the Township of Gloucester, in Camden County, filed a petition with the Commission, alleging that the New Jersey Gas Company charges excessive rates for gas and that the consumers living in the municipalities referred to are being discriminated against, because they are charged at a higher rate than the same company charges for gas supplied in Landis Township in the County of Cumberland.

Complaint was also made that the rates charged for street lighting are excessive.

The complainants allege that an underlying reason for the excessive rates is improper capitalization.

The answer of the company includes:

(1) An admission that there is a difference between the rates charged to consumers in Landis Township, and the rates charged to consumers in all other territory of the company.

(2) The claim that the rates charged in all parts of the territory are just and reasonable, excepting the rates charged in Landis Township. In this case, the company claims that the rates are too low, and are, therefore, unjust to the company.

(3) The claim that the rates for street lighting are just and reasonable.

(4) A statement that the rates for the sale of gas are not determined solely by the distance of consumers from the point of manufacture, but that many other factors must be taken into consideration.

(5) A denial of the allegations regarding improper capitalization.

(6) That the rates now charged by the company should be sustained.

On the issues joined hearings were held and testimony and exhibits making a voluminous record were submitted.

The complainants submitted a report by H. L. McMillan and F. A. Wood, Engineers, dated May 1st, 1913. There were two sections to this report: the first referring to the valuation of the property of the gas company; the second being an analysis of revenues and operating expenses.

It early appeared that the valuations submitted by the complainants were not complete. The complainants had

Township of Mantua et al. vs. New Jersey Gas Co.

not been given opportunity to inspect the property, and on this account they requested the Commission to make a valuation of the property. This was done under the direction of the Commission's Engineer, Philander Betts.

Examination of the books of the company was made by Henry S. Lyon, the accountant for the Commission, and testimony was also submitted regarding certain information taken from the books by Mr. Callingham, for the petitioners.

In accordance with the Commission's usual practice in rate cases, the company was requested to furnish an inventory and appraisal of the property, together with detailed statements regarding the finances of the company. In view of former experience, it was decided to prepare the inventory in collaboration with the engineers of the gas company, in order to eliminate all disputes as to the existence of the property itself.

The appraisal made by the Commission was presented in detail at numerous hearings held in Camden, and full opportunity was given both the company and the complainants to criticise the results as determined by the Commission's Engineers.

CORPORATE HISTORY.

The New Jersey Gas Company, in 1913, was supplying portions of Gloucester, Camden, Salem and Cumberland Counties, from a central plant located at Glassboro.

The company was formed by consolidation agreement dated May 28th, 1910, and filed in the office of the Secretary of State on June 18th, 1910. The companies consolidating which formed the original New Jersey Gas Company were:

- (1) The Laurel Springs, Magnolia & Clementon Gas Company, organized April 24th, 1909.

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- (2) Williamstown Gas Company, organized September 23rd, 1907.
- (8) Woodbury Heights Gas Company, organized March 14th, 1906.

The consolidation was effected by adding together, without increase or decrease, the face values of the capital stocks of the consolidating companies. Before consolidation the stocks outstanding were as follows:

(1)	L. S. M. & C. Gas Co. Stock issued Dec. 22/09.....	\$ 7,625
(2)	Williamstown Gas Co. " " Sept. 22/07.....	5,000
(3)	Woodbury Hts. Gas Co. " " May 21/10.....	5,000

The aggregate of these three issues was.....\$17,625

and, as part of the consolidation agreement, the New Jersey Gas Company (A) issued stock in the par value of \$17,625, in even exchange for the stocks of the constituent companies.

A second consolidation took place by an agreement of June 30th, 1910, which was filed in the office of the Secretary of State on July 2nd, 1910. By this agreement the New Jersey Gas Company (A) consolidated with the Vineland Gas Company, which was organized on January 5th, 1907; and the Elmer Gas Company which was organized September 23rd, 1907. The name of the new company was New Jersey Gas Company (B). The result of the consolidation was as follows:

(A)	New Jersey Gas Company Capital stock.....	\$17,625
(4)	Elmer Gas Co. Stock issued Oct. 1, 1907.....	5,000
(5)	Vineland Gas Co. " " July 1, 1910.....	12,500
	Stock issued by N. J. Gas Co. (B) in exchange for stocks of constituents	\$35,125

On July 2nd, 1910, the New Jersey Gas Company (B) issued stock to the par value of \$417,900, and bonds in the par value of \$900,000, these two issues being made for the purpose of purchasing the assets of the New Jersey

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Consolidated Gas Company. These assets consisted of various stocks and bonds and included contracts for construction of the new plant at Glassboro, as well as the high pressure transmission lines radiating from Glassboro to other municipalities.

A third consolidation took place by agreement of August 8th, 1910, approved by the Commission October 29th, 1910. By this consolidation the East Greenwich Gas Company (6) consolidated with the New Jersey Gas Company, (B) forming New Jersey Gas Co. (C). The result after the consolidation of October 29th, 1910, was as follows:

(6) East Greenwich Gas Co., Stock issued Sept. 29/09.....	\$ 2,500
(B) N. J. Gas Co. Stock Outstanding.....	453,025

Stock outstanding after consolidation—N. J. Gas Co. (C) \$455,525

A fourth consolidation, by agreement dated August 9th, 1910, approved by the Commission November 10th, 1910, took place by which the Pitman, Glassboro & Clayton Gas Company (7), organized on January 2nd, 1906, was consolidated with New Jersey Gas Company (C) forming New Jersey Gas Company (D). The result of this consolidation was as follows:

(7) P. G. & C. Gas Co.—Stock issued.....	\$109,500
(C) New Jersey Gas Co. " outstanding.....	455,525

After consolidation, N. J. Gas Co. (D) had outstanding.....\$565,025

By agreement of November 21st, 1911, Swedesboro Gas Company (8), organized October 4th, 1902, and reorganized as the Swedesboro Gas Light Company December 1st, 1905, was merged with the New Jersey Gas Company (D).

New Jersey Gas Company (D) had already issued securities to be used in purchasing the stocks and bonds of the

Township of Mantua et al. vs. New Jersey Gas Co.

Swedesboro Company, and, in the merger, the stocks and bonds of the Swedesboro Company were cancelled.

By merger agreement approved March 12th, 1912, Pennsgrove Gas Company, (9) which was organized August 2nd, 1904, and Bridgeport Gas Company (10) which was organized May 11th, 1909, were merged into New Jersey Gas Company (D).

The New Jersey Gas Company (D) had previously issued its own securities to purchase the securities of the Pennsgrove and Bridgeport Companies, and, in the merger, the securities of the Pennsgrove and Bridgeport Companies were cancelled.

The Vineland Gas Company (5) referred to above, although organized January 5th, 1907, does not appear to have issued any securities until July 1st, 1910. This company, however, obtained franchises from Vineland Borough on August 13th, 1907, and from Landis Township on August 5th, 1907, and April 8th, 1909. These franchises were procured because of the lapse of the franchise rights of the old company which had been serving Vineland.

The Vineland Gas Light Company was organized by Special Act of the Legislature approved March 15th, 1870 (P. L. 1870, p. 577).

In 1884, Vineland Gas Light Company became insolvent and was sold by receiver at public sale. The purchaser, John R. Farnum, operated the works until the year 1900, when on March 27th, he conveyed the same to Arthur A. Halbbrook. The conveyance included all the real and personal property purchased by Farnum at the Receiver's sale and some additional property and extensions of the works, and specifically included the franchises sold by the Receiver.

Under date of March 31st, 1900, Halbbrook and wife conveyed the same property, except the franchises, to the Vineland Light & Power Company, and by a separate in-

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strument leased the franchises to the company for the period of 99 years. From that time, up to 1907, when the whole matter was before the Court of Chancery, the Vineland Light & Power Company operated the works and made such improvements and extensions as the growth of the community seemed to warrant.

The Vineland Light & Power Company was formed March 9th, 1900, under the General Corporation Act, and on February 5th, 1907, the Court of Chancery decided that this company had no right to exercise the franchises which had been leased by Halbbrook and wife. The decision was virtually to the effect that the franchises of the Vineland Gas Light Company had lapsed because the purchaser had not formed a new corporation in accordance with the act of February 27th, 1881, and its amendments, which provided for the sale of the property of the public utility companies at Receiver's sale.

An injunction was issued by the Court of Chancery on February 15th, 1907, the result of which was to forbid the exercise by the Vineland Light & Power Company of the franchises which had been originally granted by special act to the Vineland Gas Light Company.

The Vineland Light & Power Company had not been organized under the Gas Act, and the Vineland Gas Company was therefore organized as stated above, and obtained the necessary franchises.

The Vineland Light & Power Company leased its property to the Vineland Gas Company under date of June 25th, 1908, for a period of 99 years, and at the present time, the New Jersey Gas Company is operating the property.

The New Jersey Gas Company, however, in its issue of securities of July 2nd, 1910, provided for the purchase of all the stock and bonds of the Vineland Light & Power Company.

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From the foregoing, it will be seen that the New Jersey Gas Company has been made up by various consolidations and mergers of all of the companies named heretofore, excepting the Vineland Light & Power Company, whose property is leased to the New Jersey Gas Company.

FINANCIAL HISTORY.

On July 2nd, 1910, the New Jersey Gas Company, which then consisted of the Laurel Springs, Magnolia & Clementon Gas Company, the Williamstown Gas Company, the Elmer Gas Company and the Vineland Gas Company, had outstanding stock in the par value of \$35,125. The bonds, which according to the records in the office of the Secretary of State and other places, were supposed to be outstanding, were as follows:

Laurel Springs, Magnolia & Clementon Gas Co.—Issue of Dec.	
22nd, 1909	\$100,000
Williamstown Gas Co.—Issue of April 30, 1909	30,000
Elmer Gas Co.—Issue of Oct. 30, 1909.....	25,000

So that total bonds, which according to reports were outstanding on July 2, 1910, amounted to.....	\$165,000
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On July 2nd, 1910, New Jersey Gas Company filed a statement in the office of the Secretary of State showing that on that date it was issuing stock in the par value of \$417,900, stock scrip to the value of \$62.24, and bonds in the par value of \$900,000.

The stock and scrip were issued for cash at par.....	\$ 417,962.24
The bonds at 80 amounting to.....	720,000.00
Total	\$1,137,962.24

The certificate in the office of the Secretary of State shows that these issues of stock and bonds were made to purchase

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certain properties and contracts. On page 5 of the journal of the New Jersey Gas Company, dated July 2nd, 1910, the following entry is found :—(Exhibit C-33 Nov. 26, 1913).

—July 2, 1910—

Sundries to New Jersey Consolidated Gas Co.

For the purchase of following stocks, bonds and other property in accordance with the resolution of the Board of Directors at their meeting held June 30, 1910, for the sum of		\$1,137,962.24
East Greenwich Gas Co. 1st Mtg. Bonds, \$35,000 at 102	\$ 35,700	
Elmer Gas Co. 1st Mtg. 5% Gold Bonds, \$35,000 at 105	36,750	
Laurel Springs, Magnolia & Clementon Gas Co. 1st Mtg. 5% Gold Bonds, \$45,000 at 105.....	47,250	
Pitman, Glassboro & Clayton Gas Co. 1st Mtg. 5% Gold Bonds, \$150,000 at 110.....	165,000	
Vineland Light & Power Co., 1st Mtg. 5% Gold Bonds, \$58,000 @ par	58,000	
Williamstown Gas Co. 1st Mtg. 5% Gold Bonds \$30,000 at 105.....	31,500	
Elmer Gas Co. stock—200 shares at \$25.....	5,000	
East Greenwich Gas Co. stock—100 shares at par \$25	2,500	
Pitman, Glassboro & Clayton Gas Co. stock—4380 shares at par \$25.....	109,500	
Vineland Light & Power Co. stock—600 shares at par \$100	60,000	
Hammonton & Egg Harbor City Gas Co. stock—361 shares par \$50 at \$10.....	3,610	
Lewisburg Gas Co. stock—1491 shares, par \$50 at \$15	22,365	
Marietta & Elizabethtown Gas Co. stock—802 shares, par \$25 at \$10.....	8,020	
Vineland Gas Co. stock—500 shares at par \$25.....	12,500	
Pitman, Glassboro & Clayton Gas Co.—stock rights full paid	40,500	
Total		\$638,195.00
Bills Receivable:		
Notes given by Pitman, Glassboro & Clayton Gas Co. to sundry parties.....		
		\$25,000.00

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Note given by Vineland Gas Co. to N. J. Sub. G. Co.	3,604.31	
Note given by Lewisburg Gas Co. to U. Ry. S. Co.	4,055.43	
Note given by Washington Gas Co. to U. Ry. S. Co.	3,853.42	
		<hr/>
		\$36,513.16
Accounts Receivable from East Greenwich Gas Co.....	\$	13,083.12
" " " Elmer Gas Co.....		8,116.45
" " " Laurel Springs, Magnolia & Clementon Gas Co.....		40,268.53
" " " Pitman, Glassboro & Clayton Gas Co.		131,502.87
" " " Vineland Gas Co.....		31,784.20
" " " Williamstown Gas Co.....		1,640.08
Organization Expenses:		
For organization expenses by N. J. Suburban Gas Co, incident to the perfecting of the franchises, etc., of the Elmer Gas Co., East Greenwich Gas Co., Laurel Springs, Magnolia & Clementon Gas Co., Pitman, Clayton & Glassboro Gas Co., Vineland Gas Co., and Williamstown Gas Co., now, or to be, merged into this company.....		
Equipment: 4 automobiles and one fire-proof safe.....		4,967.22
Cash on deposit.....		5,427.69
General Manager's fund.....		498.74
Construction Contract of Eastern Light & Fuel Co. with N. J. Suburban Gas Co., dated June 21, 1910, for labor and material, duly assigned to New Jersey Consolidated Gas Co., Contract price		183,826.50
Total assets acquired from N. J. Consolidated Gas Co.....	\$	1,137,962.24
The following items taken from the above are specially noted:		
1. East Greenwich Gas Co.—Stock—100 shares at par \$25.....	\$	2,500
2. Elmer Gas Co.—Stock—200 shares at \$25.....		5,000
3. Pitman, Glassboro & Clayton Gas Co.—Stock—4380 shares at par \$25		109,500
4. Vineland Light & Power Co.—Stock—600 shares at par \$100		\$60,000
Less 570 shares at par 100, turned in.....		57,000
Less 570 shares at par 100, turned in, 12/2/13.....		57,000
		<hr/>
30 " " " 100,		3,000

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5. Vineland Light & Power Co. First Mtg. 5% Bonds		
\$5,800 at par	\$58,000	
Less \$47,000 in bonds turned in, 12/2/13.....	47,000	11,000
6. Vineland Gas Co.—Stock—500 shares at par \$25.....		12,500
7. Pitman, Clayton & Glassboro Gas Co. Stock rights full paid		40,500
The total of these items amounts to.....		\$184,000

The Elmer Gas Company, the East Greenwich Gas Company, the Pitman, Glassboro & Clayton Gas Company, and the Vineland Gas Company, were either already consolidated, or were later consolidated with the New Jersey Gas Company, and, in connection with the consolidations, the amount of stock issued by the consolidated company in each case was the sum of the stocks of the subsidiary companies.

It was clearly improper to issue stock twice for the same purpose.

The Elmer Gas Company was consolidated with the New Jersey Gas Company on July 2, 1910. Stock was issued at that time in exchange for the stock of the Elmer Gas Company.

The same is true of the Vineland Gas Company, and, in this issue, as the stocks of these companies were purchased by the New Jersey Gas Company on this same date, (July 2, 1910) through the issuance of additional stocks and bonds, there should have been returned to the treasury of the New Jersey Gas Company its own stock representing the Vineland and Elmer Companies.

The same thing applies in connection with the consolidation which brought in the Pitman, Glassboro & Clayton Gas Company. This consolidation took place on November 10, 1910, although on July 2, 1910, stock was issued by the New Jersey Gas Company to be used in purchasing the stock of the Pitman, Glassboro & Clayton Gas Company. The result, on November 10, 1910, should have been to have

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brought back into the treasury of the company its own stock to the extent of \$109,500.

In addition to this transaction on July 2, 1910, the New Jersey Gas Company issued its own securities to purchase the unexercised stock rights of the Pitman, Glassboro & Clayton Gas Company amounting to \$40,500.

Securities were also issued on July 2, 1910, as per above journal entry, to purchase \$60,000 par value of capital stock and \$58,000 par value of bonds of the Vineland Light & Power Company; \$3,000 of this stock and \$11,000 of these bonds have never been delivered to the New Jersey Gas Company, the latter carrying on its books an account receivable from the New Jersey Consolidated Gas Company, amounting to \$54,500, which is the sum of the par values of the stock and bonds of the Vineland Light & Power Company, and the \$40,500 stock rights of the Pitman, Glassboro & Clayton Gas Company referred to above.

It is somewhat doubtful whether the New Jersey Gas Company ever expects to receive the \$54,500 of stocks and bonds from the New Jersey Consolidated Gas Company, inasmuch as it set up on its books as of December 31, 1910, a reserve against which to write off such of the assets purchased in the bill of sale of July 2, 1910, as had not yet been delivered to it at the close of that year, including the \$54,500, as stated in the journal entry creating the reserve.

The total amount of this reserve was \$316,083.12, which was intended to cover, in addition to the \$54,500 the following items:

\$	2,500.00	par value capital stock of the East Greenwich Gas Company.
•	5,000.00	" " " " of the Elmer Gas Co.
	12,500.00	" " " " of the Vineland Gas Co.
	109,500.00	" " " " of the Pitman, Glassboro & Clayton Co.
	15,000.00	premium paid for the latter stock, and
	13,083.12	of accounts receivable from the East Greenwich Gas Company.

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The sum of all these items, less \$18,673.34, as explained below, was written off against this reserve, and it would, therefore, seem not improbable that the remaining \$54,500 will also be similarly disposed of.

By setting up this reserve of \$316,083.12, a reduction by this amount was made in the company's surplus, which, however, was more than offset by the increase a month earlier as per the following journal entry:

	Dr.	Cr.
Franchise	\$469,000	
To profit and loss.....		\$469,000
"Increased value of the company's property through consolidation, duly authorized by the Board of Directors at a special meeting held November 23, 1910."		

If this increase in surplus had not been made, the setting up of the above reserve would have resulted in a deficit, and it would, therefore, seem not improbable that the underlying purpose of the above entry was to cover up any loss which the company might sustain from not receiving certain assets covered by the bill of sale of July 2, 1910.

As stated above, the result of issuing securities by the New Jersey Gas Company for the purchase of the stocks of underlying companies, which stocks had already been or were subsequently converted into the stock of the consolidated company, should have been to bring into the latter's treasury its own stock to the par value of \$129,500, and, as shown by the books, this actually took place. A year later, however, this amount of treasury stock was given to the Eastern Light & Fuel Company, an affiliated corporation, in payment of a current loan from the latter amounting to \$18,673.34, which was equivalent to issuing the stock at 85.58 per cent below its par value. It would, therefore, appear that \$129,500 of the company's reported outstanding capital stock has never legally been issued, since the statute

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of 1906 specifies that capital stock shall be issued only for cash or property having a value at least equivalent to the par value of the stock, and also for the reason that the sale and delivery were made without the approval of this Board.

This \$129,500 par value of stock is the sum of several items, above mentioned, covered by the reserve for contingencies of \$316,083.12, and against this reserve was written off the difference of \$110,826.66, between the par value of the stock and the actual consideration of \$18,673.34 received therefor.

Against this reserve was also written off the \$13,083.12, indebtedness of the East Greenwich Gas Company to the New Jersey Consolidated Gas Company, purchased from the latter by the New Jersey Gas Company in the bill of sale of July 2, 1910, which indebtedness it was later found did not exist. This item, therefore, represents an amount of securities issued for which no consideration whatever was received, and hence steps ought to be taken to have this amount returned to the treasury of the company.

Another fact which should be noted is that amongst the assets purchased on July 2, 1910, are the following items:

Lewisburg Gas Co.'s stock—1491 shares par \$50, at \$15.....	\$22,365
Marietta & Elizabethtown Gas Co. stock—802 shares par \$25 at \$10	8,020
Total	<u>\$30,385</u>

which represents the value of securities issued for the purchase of the stocks of these two gas companies which are located in Pennsylvania, and which are not in any way related to the companies doing business in New Jersey. It is suggested that the purchase by one gas company of the securities of a gas company located in another state, at a location entirely remote from the location of the purchasing

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company, is a proceeding which is, in any case, not to be approved by the Commission.

Both of the above securities, together with a note of the first named company for \$4,055.43, and one given by the Washington Gas Company to the Union Railway Supply Company for \$3,853.42, and also the \$3,610, par value capital stock of the Hammonton and Egg Harbor City Gas Company, a New Jersey corporation, all of which items, as shown above, were included in the bill of sale of July 2nd, 1910, aggregating \$41,903.85, were given to the Eastern Light & Fuel Company during 1912 in liquidation of floating debts amounting to \$29,540, thus resulting in a loss of \$12,363.85, of which \$853.42 was written off against the reserve for contingencies, and the balance charged directly to surplus.

In the following table are shown all the various issues of stocks and bonds of the New Jersey Gas Company and of its constituent companies. This appears in the testimony as Exhibit C-34 of November 26, 1913, pages 24-25.

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In making any fair comparison between the present outstanding capitalization of the New Jersey Gas Company and the total value of its property devoted to gas operations, proper allowance should be made for the following items, the sum of which must be regarded as constituting an amount of securities issued in excess of the actual cost or value of the total property acquired through the issue of stock and bonds.

TABLE II.

Stocks and bonds of certain companies referred to above, purchased through the issuance of securities, but never turned over to the New Jersey Gas Company.....	\$54,500.00
Discount on \$129,500 par value of treasury stock sold to Eastern Light & Fuel Co. in liquidation of a floating debt amounting to \$18,673.34 referred to above.....	110,826.66
Discount on \$1,211,000 par value of bonds issued at 80% of par value—20% on \$1,211,000.....	242,200.00
Premiums paid for stocks and bonds of constituent companies:	
East Greenwich Gas Co.....	\$ 700
Elmer Gas Co.	1,750
Laurel Springs, Magnolia & Clementon Gas Co.....	2,250
Pitman, Glassboro & Clayton Gas Co.....	15,000
Williamstown Gas Company	1,500
	<hr/> 21,200.00
Loss on securities of independent companies explained above.	12,363.85
Indebtedness of the East Greenwich Gas Co., found later not to exist, above referred to.....	13,083.12
	<hr/> \$454,173.63

The total outstanding capitalization of the New Jersey Gas Company on July 1, 1913, as shown by the preceding table was \$1,975,425, and reducing this by the sum of the above items, \$454,173.63, leaves \$1,521,251.37 as the amount which the actual cash investment in the property does not exceed, and if the proper records of the underlying com-

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panies were available, it would probably be found that even this figure was too high, inasmuch as at least part of the securities of those companies were not unlikely disposed of originally for a consideration less than their par value.

VALUATION

The valuation of the property was based upon an inventory which was prepared by the engineers of the Commission, in co-operation with the engineers of the company. On this account, there is no dispute with regard to the property of the company in existence at the time of the valuation, which was July 1st, 1913, with the exception of the house services referred to hereafter. This date was taken as of the middle of the year, in order to properly set off against it the earnings for the calendar year. All property was classified in accordance with the standard classification of accounts of the Board, a copy of which was submitted in evidence.

Land-Account No. 101.

Testimony as to Land Values was submitted by George W. Jessup, for the Commission; Joseph R. Helm and Harold C. Headley, Louis E. Taylor, and William A. Downer for the complainants. Also by Howard Iszard, Alexander H. Taylor and Henry W. Ridgway, for the respondent.

Some other information was available with regard to Land Values in the appraisals made of the Swedesboro, Pennsgrove and Bridgeport properties by Mr. Betts for the Commission, and Benjamin Van Schaick for the company, these appraisals having been made in 1911.

A statement was also submitted by the company purporting to be based on the actual cost of the land to the company so far as the company was able to ascertain it. This is found in Exhibit C-1 of September 23rd, 1913.

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Glassboro

McMillan & Wood

(Report May 1, 1913).....\$ 3,600

On basis of 3.54 acres.

The tract itself contained 4.648 acres and on the above basis
the valuation would be 4,930

George W. Jessup

In his letter presented before the hearing named a valuation of
\$6,500.

In his testimony he stated that the value would range between
\$2,000 and \$1,400 per acre.

On cross-examination he contended that \$1,500 per acre was a
fair price for the land. This would give as a value \$6,972, to
which must be added the cost of grading, fencing and other
items 6,972

Dr. Howard Iszard

Valued the land at \$3,000 per acre. At this rate Dr. Iszard's
valuation would be \$13,944, which included the cost of improve-
ments to the land which he roughly estimated at \$2,000. The
land, then, without the improvements, would be valued at..... 11,950

Joseph R. Helm

A tax assessor estimated the value for assessment purposes on
the basis of 4 acres, the total estimate for assessment being
\$3,000 3,000

William A. Downer

Also an assessor, estimated the value of the land at from \$1,000
to \$1,200 per acre. This would give a valuation to the land of
from \$4,648 to \$5,577.

C. W. Hoy, for the company

In Exhibit C-1 of Sept. 23rd, placed the value of the land at....\$16,624

It appears that this figure was made up in the following
manner:

The land was purchased in several parcels, one of which
was purchased before Mr. Hoy became connected with the
company. Some search was made by him of the available
information which led to certain conclusions as to the cost
of the first piece of land; to this was added the actual cost
of the other sections, and, in turn, was added the cost of the
grading, shrubbery, cement sidewalk and other improve-
ments. The figure of \$16,624 was arrived at in this way.

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Owing to the fact that Mr. Hoy did not testify, the details making up his total are not available.

We have estimated the cost of the grading, sidewalk, shrubbery, etc., at \$2,240. Deducting this from Mr. Hoy's total, gives us a figure for the land of \$14,384.

We accept the figure of \$7,000.

Vineland

McMillan & Wood.....	\$1,600
New Jersey Gas Co.....	3,500
A. M. Taylor.....	3,500
George W. Jessup.....	2,500
Louis E. Taylor.....	2,700

We accept the figure of \$2,700.

Swedesboro

There were two parcels, one occupied by the Gas Works outside of the limits of the Borough on the south, the other occupied by an office building in Swedesboro.

Mr. Ridgway stated that the land occupied by the Gas Works cost originally \$300, but was now assessed at \$1,000.

Neither Mr. Jessup, nor Mr. Wood, nor Mr. Betts, was informed as to the ownership of the office building plot in the Borough. There seems to be a uniformity of opinion that the office building plot was worth about \$300.

The estimates of value of the plot occupied by the manufacturing plant are as follows:

H. W. Ridgway.....	\$1,000
George W. Jessup.....	150
McMillan & Wood.....	600
New Jersey Gas Co.....	1,000

The figures presented in this case vary widely.

An allowance of \$600 for the land at the plant and \$300 for the land at the office building, giving a total of \$900 appears to be proper.

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Pennsgrove

McMillan & Wood (in their report of May 11th).....	\$ 300
New Jersey Gas Co. (in Ex. C-1 Sept. 23/13).....	2,200
George W. Jessup	625
P. Betts (in his estimate made in 1911).....	600
New Jersey Gas Co. (by Mr. B. L. Van Schaick in 1911)..	\$1,500
This estimate, however, included the fencing. The estimated cost of the fence was \$369.23.	
This estimate must be deducted from the estimate of \$1,500 in order to make a proper comparison.....	
	\$1,130

In view of all the facts developed a fair value for this land appears to be \$750, which is at the rate of \$150 per lot for five lots.

Woodbury Heights

New Jersey Gas Company.....	\$ 800
George W. Jessup.....	800

Definite information was available regarding the lots in Woodbury Heights, and the figure of \$800 is, therefore, accepted.

Bridgeport

New Jersey Gas Company.....	\$ 450
N. J. Gas Co. in 1911, estimate of B. L. Van Schaick.....	100
George W. Jessup.....	300

This land is peculiarly situated, and under certain conditions might have a special value for purposes requiring a railroad siding. We, therefore, accept the figure of \$300.

Summary of allowances for land is as follows:

Glassboro	\$ 7,000
Vineland	2,700
Swedesboro	900
Pennsgrove	750
Woodbury Heights	800
Bridgeport	300
<hr/>	
Total	\$12,450

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To this must be added the deductions made on account of improvements in Glassboro, which we have estimated at about \$2,240, giving a total investment for land and improvements not included in other parts of the appraisal of \$14,690.

There has been some discussion as to the propriety of considering overhead charges in connection with land. It is not contended that the overhead charges in any way increase the value of the land, but there is no question that there are certain overhead charges incurred in connection with the purchase and holding of the land until such time as the gas manufacturing plants can be put into operation.

The allowance for overhead charges given in the testimony of the Engineer of the Board appears to be based on consistent and logical determination, and on this account an allowance for overhead charges in connection with land is allowed.

20% on \$12,450=\$2,490.

Total allowance for land, and overhead charges connected therewith—\$17,180.

PHYSICAL PROPERTY OTHER THAN LAND.

To the items of property in the inventory prepared by the Board's Engineer, unit prices were applied which were made up largely from information obtained from manufacturers of various classes of plant; and using a schedule of rates of wages obtained from builders in the various localities served by this company.

The full details of the appraisal were presented at the hearings, and the various engineers engaged in the work were cross-examined as to the methods employed.

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The cost to reproduce the property new, and present value, omitting organization and franchises, but including land at the valuation adopted above, is as follows:

TABLE III.

Account.	Cost to Reproduce.	Present Value.
101. Land	\$ 17,180.00	\$ 17,180.00
106. General Structures	17,937.96	17,937.96
107. General Equipment	18,226.72	17,315.38
108. Works and Station Structures.....	65,134.26	62,862.11
108. Minor Structures	12,377.65	12,214.01
108. Tanks and Wells	11,482.00	10,880.00
109. Holders	132,001.20	117,503.00
110. Boilers and Furnaces	15,603.60	13,572.00
114. Benches and Retorts	6,984.00	2,955.00
115. Water Gas Sets	40,704.00	35,541.00
116. Purification Apparatus	23,552.31	20,607.00
117. Accessory Equipment	38,364.00	33,621.00
118A. Transmission Mains	275,972.00	255,622.00
118B. Distribution Mains	211,805.00	178,535.00
119. Services	196,018.26	175,281.90
120. Meters	75,523.17	60,555.13
121. Meter Installation	5,011.79	5,011.79
122. Street Lighting Fixtures	15,245.70	14,393.71
124. Gas Tools and Implements	2,626.97	2,495.62
125. Laboratory Equipment	428.32	406.90
	<hr/>	<hr/>
	\$1,182,178.91	\$1,054,490.51
152. Materials and Supplies	46,915.36	42,888.82
	<hr/>	<hr/>
	\$1,229,094.27	\$1,097,379.33

Below is a summary showing the net cost with the additions for overhead charges, these additions having been made in accordance with the schedule for overhead charges worked out by the Engineer of the Commission.

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TABLE IV.

Account	Net Cost.	%	Percentage* Additions.	Cost to Reproduce
101. Land	\$ 14,690.00	20	\$ 2,490.00	\$ 17,180.00
106. General Structures ...	13,287.33	35	4,650.63	17,937.96
107. General Equipment ...	17,358.78	5	867.94	18,226.72
108. Works and Station Structures	48,247.60	35	16,886.66	65,134.26
108. Minor Structures	9,094.52	35	3,283.13	12,377.65
108. Tanks and Wells	8,505.18	35	2,976.82	11,482.00
109. Holders	110,001.00	20	22,000.20	132,001.20
110. Boilers, Furnaces	13,003.00	20	2,600.60	15,603.60
114. Benches and Retorts ..	5,820.00	20	1,164.00	6,984.00
115. Water Gas Sets	33,920.00	20	6,784.00	40,704.00
116. Purification Apparatus	19,626.92	20	3,925.39	23,552.31
117. Accessory Equipment..	31,970.00	20	6,394.00	38,364.00
118A. Transmission Mains ..	223,459.00	23	52,513.00	275,972.00
118B. Distribution Mains....	192,550.00	10	19,255.00	211,805.00
119. Service	186,684.06	5	9,334.20	**196,018.26
120. Meters	75,523.17	0	0.00	75,523.17
121. Meter Installation	5,011.79	0	0.00	5,011.79
122. Street Lighting Fix- tures	15,245.70	0	0.00	15,245.70
124. Gas Tools, Implements	2,501.87	5	125.10	2,626.97
125. Laboratory Equipment.	428.32	0	0.00	428.32
Totals	\$1,026,928.24		\$155,250.67	\$1,182,178.91

Ratio of percentage addition to net cost, modified as shown in note below, is 15.11%.

It will be noted that these allowances range from 0% up as high as 35%, and at first glance it may appear that the allowances are excessive, but when it is noted that the aver-

*Net cost obtained by dividing cost to reproduce by 1.00 plus overhead charges.

**Cost to reproduce of this account was estimated from company's experience for last 2½ years, the book figures including overhead charges, which are estimated to have been about 5%.

NOTE—Accounts Nos. 109 to 117, inclusive, are not net costs, but include a contractor's profit.

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age percentage addition to the net cost of physical plant amounts to 15.11%, it will be recognized that the allowance bears a fair comparison with allowances made for similar purposes in other cases.

In comparison with this allowance of 15.11%, the following table is interesting:

	Per Cent
Chicago City Railways, by the Traction Valuation Commission, 1906 (including brokerage)	21.7
Columbus (Ohio) Railway and Light Company (Elec.) by U. S. Circuit Court, report of Special Master, 1906.....	9.8
Minnesota R. R., appraisal by Minnesota R. R. & Warehouse Commission, 1908	17.7
Northern Pacific Railway, by Washington R. R. Commission, 1908..	5.8
Lincoln (Neb.) Gas & Elec. Light Co. (gas) by U. S. Court, 182 Fed. Rep. 926,223, U. S. 349,359, 1909.....	7.7
Chicago Consolidated Traction Company, by B. J. Arnold and George Weston, 1910	20.4
Puget Sound Elec. Ry., by Washington R. R. Comm. 1910.....	15.7
So. Dakota R. R. appraisal by the Board of R. R. Commissioners of So. Dakota, 1910	13.7
Consolidated Gas Co. of Long Branch, by the Board of Public Utility Commissioners, (N. J.) 1911.....	12.0
*Kings County Lighting Company (gas) by New York Public Service Commission, First District, 1911.....	27.1
*Queensboro Gas & Elec. Co., by N. Y. Pub. Serv. Commission, First District, 1911	81.3
Peoples Gas Lt. & Coke Co., by W. J. Hagenah, 1911.....	17.0
Peoples Gas Lt. & Coke Co., by Edw. W. Bemis, 1911.....	17.0
Union Electric Light & Power Co. (St. Louis) by St. Louis Public Service Commission, 1911.....	10.8
Chicago Elevated Railways (City valuation), 1912.....	18.0
Consolidated Gas, Electric Light & Power Company of Baltimore, by the Public Service Commission of Maryland, 1912.....	29.5
Public Service Gas Company (Passaic Division) by the Board of Public Utility Commissioners (N. J.) 1912.....	17.6

The Commission adopts as the cost of reproduction new of the physical property, including land, as of July 1st, 1913,

*Includes an allowance for development of the business.

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\$1,229,094.27, and for the present value of the same property \$1,097,379.33.

PROPERTY USED AND USEFUL.

As already stated in this report, the New Jersey Gas Company was formed in the year 1910 by consolidation of a number of other companies, the majority of which had then been in existence but a short time. It will thus be readily seen that the larger part of the property under consideration is comparatively new.

In connection with a newly developed enterprise, it would be absurd to attempt ordinarily to put into effect a system of rates which would produce a net profit during the early period of a company's existence. A plant is usually designed with a view to supplying a certain territory. New customers are taken on in some cases fairly rapidly; in other cases the growth is not so rapid.

Allowing for the immediate future growth in business, is the existing plant of the company larger than is reasonably required?

This is a difficult question to answer. The system of the New Jersey Gas Company is very largely a high pressure system. Many more customers may be served by increasing the transmission pressure. To what extent the pressure may be increased has not been determined, as the distribution of gas at high pressure is a recent development, and experience is not available concerning its limitations.

Another matter which must be considered is the growth in territory. Taking our information from the United States Census, and making certain deductions for population probably not served, we have for the year 1890 a population of 38,195
For the year 1900 a population of..... 43,860
For the year 1910 a population of..... 51,911

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The maximum day's sendout and the maximum hour's sendout appear to have been somewhat as follows:

TABLE V.

Date	Maximum Day's Sendout Corrected	Annual Sales in M cu. ft.	Ratio Annual Sendout to Maxi- mum Day	Ratio Annual Sendout to Maxi- mum Hour
1912	862,000	121,526	141.0	1,410
1913	767,641	134,995	176.0	1,760

We estimate that the capacity per day of twenty-four hours of each of the various parts of the manufacturing plants owned by the company is:

TABLE VI.

<i>Generating</i>	<i>Cubic Feet</i>
Carburetted water gas set, no reserve, Glassboro	2,200,000
Carburetted water gas set, no reserve, Swedesboro	125,000
Carburetted water gas set, no reserve, Pennsgrove	100,000
Carburetted water gas set, no reserve, Vineland	100,000
Retort Benches reserve against carburetted water gas set (Vineland)	000,000
Total Generating Capacity	2,525,000
<i>Condensers:</i>	
Glassboro	1,500,000
Swedesboro	125,000
Pennsgrove	000,000
Vineland	000,000
Total Condenser Capacity	1,625,000
<i>Scrubbers and Washers:</i>	
Glassboro	1,500,000
Swedesboro	125,000
Pennsgrove	100,000
Vineland	100,000
Total Scrubbers and Washers.....	1,825,000

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Purifiers:

Glassboro	1,500,000
Swedesboro	125,000
Pennsgrove	100,000
Vineland	100,000

Total Purifier Capacity.....	1,825,000
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Holder:

Glassboro, on basis of storage for 70% of sendout on maximum day	1,545,000
Swedesboro, ditto 75%.....	33,000
Pennsgrove, " 75%.....	27,000
Vineland " 75%.....	53,000

Total Holder Capacity	1,658,000
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We estimate that the population, the annual sales in M. cu. ft., the maximum day's sendout and the maximum hour's sendout in the years 1914, 1917 and 1920 will be as shown in the following table:

TABLE VII.

Year	Population of territory served	Annual Sales in M. cu. ft.	Maximum Day's send- out in M. cu. ft.	Maximum hour's sendout in M. cu. ft.
1914	55,180	145,950	811	81.1
1917	57,580	177,345	928	92.8
1920	60,000	210,000	1050	105.0

As shown by this table the estimated maximum day in 1917 will be 928,000 cu. ft. and in 1920, 1,050,000 cu. ft., while the generating capacity of the Glassboro plant is 2,200,000 cu. ft., and the holder capacity and purification is sufficient for a maximum day's sendout of 1,545,000 cu. ft. This indicates that the capacity of the Glassboro plant is in excess of the requirements of this company in the near future. The holder capacity is sufficient for a sendout of 450,000 cu. ft., in excess of probable requirements. On the basis

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employed this is equivalent to an actual storage capacity of 300,000 cu. ft., and a 700,000 cu. ft. holder at Glassboro will be ample for the anticipated requirements of the company. The difference in cost between a 700,000 cu. ft. and a 1,000,000 cu. ft. holder is approximately \$12,000. Excess generating capacity is estimated at \$4,000. There is at least 20% excess capacity in the gas house. This excess we estimate at \$8,000.

Since the generating capacity at Glassboro is ample for the probable requirements of this company until 1920, it would seem that the generating capacity of the plants at Swedesboro, Pennsgrove and Vineland are in excess of the requirements of the communities served. Portions of the buildings at these plants are useful for storage purposes, and the holders are required to insure continuity of service and care for the hours of maximum demand, but it is the judgment of the Commission that a reduction should be made for the cost of capacity in excess of reasonable requirements, having due regard to necessary reserve.

It, therefore, appears proper to deduct the value of the generating and purifying equipment at Swedesboro, Pennsgrove, Vineland and Woodbury Heights, and so much of buildings as is required to house them, which amounts to \$51,844, cost to reproduce, or \$36,826 present value. Total deductions for excess property given above is \$75,844 value new; \$60,108 present value.

OTHER EXCESS PLANT—SERVICES.

A study of the amount of the various items of plant shows as follows:

There are in use 7,699 meters; number of services is stated as 10,567, an excess of 2,868, or 37.2%.

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We have made some analysis of the relation between unused services and the number of meters in use, and find that the number of unused services in fairly well developed territory rarely, if ever, exceeds 15% of the number of meters.

If, in this case, we include in our base upon which rates are to be predicated a number of excess services equal to 15% of meters in service, there remain about 1,722 services, with a value new of approximately \$31,943 or \$28,563 present value, which ought not to be included.

These unused services would fall in two classes. Many of them are constructed in advance of their need into properties where buildings have not yet been built, or, in case buildings have been built service has never been established. The other class into which these unused services would fall includes services in the competitive territory of Vineland and other services where the customers have discontinued the use of gas.

In our opinion it is reasonable to include a certain number of unused services, but the excess ought not to be included. Services not yet put in use have undoubtedly been laid for the future, while services which have been in use should be considered as occupying the same position as other used property to be found in the storerooms of the company. A reasonable amount of such property would be included under the head of "Materials and Supplies." The amount carried under "Materials and Supplies" must bear a reasonable relation to the actual conditions under which the company operates.

In the Board's opinion the present value of unused services included in the inventory, in excess of a fair allowance is approximately \$28,563. We have stated above that the excess present value of buildings and generating equipment amounts to \$60,108, present value. The sum of these two items amounts to \$88,671.

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We are, therefore, deducting from the present value of the property as stated above, the amount of \$88,671, which, in the opinion of the Commission, represents the excess present value of plant not used and useful by the present customers of the New Jersey Gas Company, and not required to serve customers taken on between this time and 1920.

The total excess on basis of cost of reproduction new is estimated at \$107,787.

In Table III we have given the present value of physical property, not including materials and supplies, at \$1,054,490.51. From this will be deducted (see above) the sum of \$88,671, leaving a total present value for physical property to be included in the base on which to predicate rates—\$965,819.51.

WORKING CAPITAL

Under the head of Working Capital, the company has set up a claim for an allowance of \$64,305.23. This is made up as follows:

Materials and supplies	\$42,449.64
Cash	5,515.55
Accounts receivable	9,834.77
Bills receivable	5,590.00
Suspense items	915.27

Working Capital will consist of materials and supplies; cash; strictly speaking, the difference between bills and accounts receivable on the one hand and bills and accounts payable on the other; and an allowance for gas already manufactured but not delivered; in other words, gas in the holder and mains.

Under the head of materials and supplies we find included in the store room at Glassboro discarded machinery and ac-

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cessories, to which a value new has been given of approximately \$12,000.

This property has been in use and has not yet been charged off, and under the head of Working Capital ought not to be set up as a part of the base upon which to predicate rates. It should be noted, however, that if it is not included here, it would probably have to be considered as one of the elements of depreciation not yet earned.

On the other hand, it seems fair to consider that depreciation of at least one-third had accrued prior to the taking over of these plants by the New Jersey Gas Company, and we, therefore, deduct from our valuation of the property carried under the head of Materials and Supplies the additional sum of \$4,000, from its present value. This leaves as follows:

Materials and Supplies (as per inventory less deduction).....	\$38,888.82
Gas in holder and mains	2,000.00
Working capital on a basis of one month's revenues not yet received	14,000.00
Cash on hand	5,515.55
<hr/>	
Total allowance, including materials and supplies, for working capital	\$60,404.37

INTANGIBLES.

With regard to the allowance for intangibles, the company has submitted an estimate of the cost of establishing the business as indicating the amount which should be allowed for intangibles. In this case in the opinion of the Commission proper consideration must be given to this expense. The claims of the company, however, cannot be allowed.

The claim made by the company for the cost of establishing the business was submitted in Exhibit R-1 of Nov. 19, 1913. The figures found in this Exhibit were checked by the

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Accountant for the Commission from the books of the company, and on November 26th a revised summary of the intangibles was submitted by the company. This revised summary reads as follows:

TABLE VIII.

SUMMARY OF INTANGIBLES IN VALUATION.

A/C No. 102	Organization Expense (See page 3 seq.).....	\$ 44,327.49
No. 105	Other Intangibles (as below).....	388,909.79
Page 5	Developmental Expense.....	\$ 20,542.73
" 6	Losses in operating.....	4,663.64
" 7	Losses in material and supplies	5,843.67
" 8	Losses in unearned taxes.....	5,960.02
" 9	Losses in unearned damages paid	3,269.74
" 10	Losses in uncollectibles.....	3,585.29
" 11	Premiums on underlying bonds	21,200.00
" 12	Franchise requirements capitalized	38,348.45
" 13	Intangibles allowed by B. P. U. Commissioners in mergers..	44,100.00
" 14	Accrued depreciation unearned.	134,446.30
" 16	Uncollected Profits	106,949.95
		<u>388,909.79</u>
A/C No. 128	Legal during construction.....	18,939.21
	Total Intangibles claimed.....	<u>\$452,176.49</u>

Looking over the items given above, we find (1) Organization expense—\$44,327. The items making up this have been carefully examined, as stated, by the Accountant of the Commission, and he finds that the books of the company contain the various items making up the total referred to. The accountant for the complainants criticised some of these items, in particular the largest item found in the Journal, page 6 of July 2, 1910. "Organization Expense, &c.," amounting to \$42,138.68. In the opinion of the last exam-

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iner referred to, this amount was a sum added in order to arrive at a balance, and as no voucher for the amount could be shown, his assumption appears to be reasonable. The total amount of this claim amounts to about 3.4% of the cost to reproduce the property new, and together with the other items of organization expense, for which proper vouchers were exhibited, appears to constitute an unreasonable amount for the total cost of organizing a company the size of the New Jersey Gas Company.

Of somewhat the same nature as organization expenses are legal expenses during construction, for which item the sum of \$18,939.31 is claimed. Of this amount, however, \$5,000 is for the estimated legal expenses to cover the present valuation case, and inasmuch as it, therefore, does not represent an actual expenditure of money made prior to July 1, 1913, but merely an estimated expenditure to be made after that date, it cannot properly be included as a part of the cost of the property as of that date. The remaining \$13,939.21 cover items all supported by vouchers which clearly show them all to be proper charges to this account. In view of all the circumstances, and in the absence of exact proof, we allow \$25,000 for organization, legal expenses, &c.

The remaining item to be considered, "Other Intangibles," amounting to \$388,909.79, is made up as follows:

The first sub-item, "Development Expense," includes the cost of advertising, soliciting and demonstration from July 1, 1910, to June 30, 1913, amounting to \$20,542.73. Of this amount, \$3,639.73 was included in the operating expenses of that period, and to this extent there exists a duplication between this claim for the cost of securing new business and that for uncollected profits. Under this heading we, therefore, allow only \$17,000, which amount does not appear in operating expense.

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The next five sub-items, totaling \$23,322.36, were taken from a series of vouchers, all covering charges which under the present system of accounts should properly have been made to operating expenses instead of directly to the company's profit and loss account. Inasmuch as we have included them all in a revised statement of operating expenses hereinafter set forth, from which are calculated the amount of uncollected profits or deficiency of return upon the investment, we disallow them as separate items in determining the cost of establishing the present business of the company.

The next sub-item, "Premiums on underlying bonds," \$21,200, has been referred to in the earlier part of this report under the head of Financial History. In the opinion of the Board, the payment of these premiums was unnecessary, particularly in view of the fact that in the purchase of the bonds they did not actually change hands, but were transferred from one corporation to another, both of which were controlled by the same individuals.

The next sub-item, "Franchise requirements capitalized," \$38,348.45, represents the amount of money, which invested at 5% interest will yield each year the estimated average cost of supplying gas to municipalities free of charge as a part of the company's franchise requirements. Inasmuch as the cost of this service already forms a part of operating expenses, there is also a duplication between this claim for loss of revenue, and that for uncollected profits, and it should, therefore, not be allowed.

The next sub-item, \$44,100, is for "Intangibles allowed by the Board of Public Utility Commissioners in mergers," namely; those of the Swedesboro Gas Company, Pennsgrove Gas Company and Bridgeport Gas Company. As a matter of fact, no such allowance was made by the Board and cannot now be allowed.

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The next sub-item, "Accrued depreciation unearned," \$134,446.30, cannot be allowed.

The property of the New Jersey Gas Company is not all of the same age. The oldest portion of the system is in Vineland and was constructed in the years following 1876. Some portions of the Vineland plant are very old, and the depreciation which has accrued is considerable. The Vineland plant was taken over in 1910 by the present company, and such depreciation as had accrued up to that time cannot be considered as having been unearned, as the Vineland plant was taken over at its then value. The estimated depreciation of the Vineland plant as found in the appraisal by the Commission, Exhibit C-14, of October 1st, amounts to \$42,293.50. We estimate the depreciation accrued prior to 1910 and which cannot be considered as having been unearned as \$31,895.65.

The Swedesboro and Pennsgrove plants were also constructed several years prior to 1910, and such depreciation as had accrued prior to that date should not be allowed under this heading, as the properties were taken over in 1910 and 1911 at their assumed value at that time. The amount of such depreciation is estimated to be \$4,695.65 on the Swedesboro plant, and \$3,845.80 on the Pennsgrove plant.

The total present value of the physical property above allowed to be included in the base upon which to predicate rates was \$965,819.51 and the value new of the same property is estimated to be \$1,074,391.21. The difference, \$108,571.70, is, therefore, the total amount of estimated accrued depreciation on the property whose value is to be included in the base for determining the reasonableness of the present rates charged by the company. As stated above, there cannot be considered as having been unearned the depreciation which had accrued prior to July 1, 1910, and the amount of this as shown above is estimated to be \$40,437.10. De-

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ducting this from \$108,571.70 leaves \$68,134.60 as the total amount of depreciation accrued since 1910.

The next sub-item, "Uncollected Profits," \$106,949.95, is given in detail on pages 15 and 16 of Exhibit R-1 of November 26, 1913. On these pages is set out a statement showing:

- (1) The tangible property value claimed by the company;
- (2) The intangible property value;
- (3) A statement of the amount of return to be allowed.

As our allowance for physical value and intangibles does not correspond with that of the company, the claim made by them for unearned profits cannot be accepted as it stands, and we have, therefore, prepared a new statement in the same form as that submitted by the company, using, however, the amount above allowed, which is as follows:

TABLE IX.

Physical value as allowed above not including materials and Supplies	\$ 965,820	
Working capital, including materials and supplies.....	60,404	
		<hr/>
Total tangible value, June 30, 1913.....	\$1,026,224	
Intangibles already allowed		
Organization Expense }	\$ 25,000	
Legal " }		
Development "	17,000	
Unearned Depreciation	68,135	110,135
		<hr/>
Total value as of June 30, 1913.....	\$1,136,359	
Deduct additions to plant, first 6 months 1913.....	\$25,530	
" 5% allowance for working capital.....	1,277	
" intangibles for 1913.....	36	26,843
		<hr/>
Total value as of Dec. 31st, 1912.....	\$1,109,516	
Deduct additions to plant during 1912.....	\$175,615	
" 5% allowance for working capital.....	8,781	
" intangibles for 1912.....	17,918	202,314
		<hr/>
Total value as of Dec. 31, 1911.....	\$ 907,202	

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Average additions to plant, 1911.....	\$431,397	
Less excess value in Glassboro plant excluded on page 26 therein included.....	\$24,000	
Less the part of buildings and generating plant in Vineland, Pennsgrove and Swedes- boro, excluded on p. 26, etc., which was in service in 1911 (at its present value in 1911)	35,186	59,186
		<u>\$372,211</u>
5% allowance for working capital.....	18,610	
Intangibles for 1911	1,270	
Average additions deducted		<u>392,091</u>
Total value as of Dec. 31st, 1910.....	\$	<u>515,111</u>

With the foregoing as the basis, 6½% return is computed below on the average investment of each year, namely, one-half the additions during the period plus the total valuation at the close of the preceding year and the net loss experienced from July 1, 1910, to January 1st of the year. "The total valuation as of December 31, 1910, is assumed as the average because as a matter of fact construction was going on during the whole year, although July 1st, 1910, has been assumed as the starting point for this investigation." (From page 16 of company's Exhibit R-1 November 19, 1913).

TABLE X.

(Amounts taken to nearest dollar.)

1910 Average investment	\$515,111	
Return at 6½% (3¼% for 6 mos.)	\$	16,741
Actual net revenue received		6,122
Deficiency of return 1910		<u>\$10,619</u>
1911 Average additions for yr. (one-half \$392,091).....	196,046	
Total valuation Dec. 31, 1910....	515,111	
		<u>711,157</u>

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Less $\frac{1}{4}$ of \$59,186.....	14,796		
Less working capital 5%.....	740		
For plant excluded on sheet 26.....	15,536		
	695,621		
Deficiency of return 1910.....	10,619		
Basis for return in 1911.....	706,240		
Return at $6\frac{1}{2}\%$		45,906	
Actual net revenue received.....		47,694	
Excess of return 1911.....			\$1,788
1912 Average additions	101,157		
Total value Dec. 31, 1911.....	907,202		
Net loss July 1, 1910 to Dec. 31, 1911	8,831		
Total basis for return.....	1,017,190		
Return at $6\frac{1}{2}\%$	66,117		
Actual net revenue received.....	69,688		
Excess of return 1912.....		3,571	
Net deficiency July 1st, 1910, to Dec. 31, 1912			\$5,260

According to the computation in Table X, the total amount to be allowed for insufficient returns upon the company's investment is \$5,260, as against \$106,949.95 claimed by the company; and makes the total amount to be allowed as the cost of establishing the business.

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TABLE XI.

SUMMARY OF INTANGIBLES.

(Amounts to nearest dollar.)

Acc. #102 & 128	Organization Expense, Legal Expense, &c....	\$ 25,000	
105	Other Intangibles		
	Development Expenses	\$17,000	
	Accrued Depreciation unearned	68,135	
	Deficiency of returns at 6½%	5,260	90,395
			<hr/>
Total	.....		\$115,395

TABLE XII.

SUMMARY OF VALUATION AS ALLOWED, JULY 1, 1913.

For purpose of making a rate.

Account No.	Account	Cost to Reproduce	Present Value	Annual Depreciation
101.	Land	\$ 17,180	\$ 17,180	\$
106.	General Structures	17,938	17,938	179
107.	General Equipment	18,227	17,315	2,662
108.	Works and Station Structures			
	Main Buildings	47,373	46,279	734
	Minor Structures	12,378	12,214	201
	Tanks and Wells	11,482	10,880	223
109.	Holdings	120,001	105,965	2,313
110.	Boilers, Furnaces, & Ac.	12,474	11,448	513
115.	Water Gas Sets	24,334	22,641	836
116.	Purification Apparatus	15,291	14,660	371
117.	Accessory Equipment	27,026	25,560	733
118A.	Transmission Mains	275,972	255,622	6,688
118B.	Distribution Mains	211,805	178,535	5,097
119.	Services	164,075	146,719	6,562
120.	Meters	75,523	60,555	3,021
121.	Meter Installation	5,012	5,012	00
122.	Street Lighting Fixtures	15,246	14,394	305
124.	Gas Tools and Implements....	2,627	2,496	263
125.	Laboratory Equipment	428	407	21
		<hr/>	<hr/>	<hr/>
Physical Capital.....		\$1,074,392	\$ 965,820	\$30,682

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Materials, Supplies and other working capital	68,431	60,404	100
Total	\$1,142,823	\$1,026,224	30,782
Intangible Capital	115,395	115,395	
Grand Total as of July 1, 1913.....	\$1,258,218	\$1,141,619	\$30,782
Amounts are taken to the nearest dollar.			

TABLE XIII.

RECAPITULATION.

SUMMARY OF ALLOWANCE AS OF JULY 1ST, 1913.

Physical Property, present value	\$ 965,820
Working Capital	60,404
Cost of establishing the business.....	115,395
Total Valuation as of July 1, 1913.....	\$1,141,619

EARNINGS AND EXPENSES.

The rates charged by the New Jersey Gas Company vary in different sections of the territory. In Swedesboro the net rate is \$1.35 per thousand cubic feet, while in the rest of the territory, excepting Vineland and Landis Township, the net rate is \$1.38. In Vineland and Landis Township the rate has been \$1.00 flat. In addition to these rates, a very small number of customers have purchased gas at wholesale at somewhat lower rates.

So far as cost of manufacture and distribution is concerned, the cost of service in Vineland and Landis Township has not been less than in other portions of the territory served by this company.

If the rate schedule had been uniform throughout the entire territory served by the company, the revenues would have been greater; the losses less, and the company in a better condition financially.

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The rate in Vineland and Landis Township has been \$1.00 per thousand for some years. The ordinance under which the company is operating in Vineland provided for such a rate, and the company then in control accepted this ordinance, and apparently expected to be able to furnish service at the rate named.

The history of the company shows that it was unable to do this without loss, so that the results of operation under the terms of the ordinance are not conclusive as to the fairness of the rate which has been charged in Vineland. In 1911, the generating plant in Vineland was shut down and gas supplied through high pressure transmission mains from the large central plant at Glassboro. This ought to result in lower unit costs, due to centralization of production.

The New Jersey Gas Company was formed in June, 1910, and, owing to the growth by consolidation with other companies, the construction of a large central plant and the installation of transmission mains, extending to the distribution systems formerly operated from other small plants, it is quite difficult to draw any fair comparisons between the earnings and expenses of the various years.

Furthermore a new uniform classification of accounts for gas companies went into effect on January 1st, 1913, and owing to difference in classifications comparisons are misleading. During the year 1912, as well as earlier, a great deal of construction work was in progress, and a large portion of the salaries of the manager, auditor and others was charged to "Construction." Although it was entirely proper to divide these charges in some such way, the resulting unit costs for gas appear to be inconsistent with one another.

The results of operation from July 1st, 1910, to October 31st, 1915, are given in the following table:

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TABLE XIV.
OPERATING REVENUES, OPERATING EXPENSES
(1)
Excluding Depreciation

	1910 6 mos.	1911 12 mos.	1912 12 mos.	1913 12 mos.	1914 12 mos.	1915 10 mos.
NEW JERSEY GAS COMPANY						
Municipal street lighting.....		\$ 6,165	\$10,419	\$9,883	\$9,433	\$8,363
Prepaid Meters		70,044	96,292	110,299	121,969	108,898
Regular "		41,329	51,982	58,999	57,127	48,481
Sold other Gas Companies.....		2,022				
Misc. gas sales.....		1,281	1,148	687	703	506
Total gas sales	\$41,099	\$120,841	\$159,841	\$174,868	\$189,232	\$166,248
Less discounts	349	2,541	3,703	4,682	4,729	4,335
Gas revenues	40,750	118,300	\$156,138	\$170,186	\$184,503	\$161,913
Residuals				10	613	452
Mdse. & Jobbing—Net	757	2,184	10,061	3,548	4,088	1,836*
Total Operating Revenues.....	\$39,993	\$120,434	\$166,199	\$173,744	\$189,210	\$164,201
					Misc. 6	

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TABLE XIV—Continued.

OPERATING EXPENSES:

	1910 6 mos.	1911 12 mos.	1912 12 mos.	1913 12 mos.	1914 12 mos.	1915 10 mos.
Production	\$17,873	\$41,478	\$49,191	\$ 58,879	\$ 58,898	\$47,271
Distribution	2,849	5,166	11,149	21,321	22,100	13,794
Municipal St. Ltg.	770	2,987	4,044	5,115	5,139	3,885
Commercial	3,779	10,704	11,099	10,609	9,220	7,544
Business Promotion		1,179	146	1,156	1,104	964
General & Mis. (Excluding de- preciation)	1,700	3,646	2,427	8,724	10,382	9,594
Total Operating Expenses.....	\$26,471	\$65,160	\$78,055	\$105,304	\$106,343	\$83,052
Taxes	1,651	3,435	4,909	10,224	10,308	9,975**
Uncollectible Bills.....			167	484	622	831.26
Total Deductions (Excluding Depreciation)	\$28,122	\$68,595	\$83,131	\$115,962	\$117,263	\$93,858
Net						
Net	11,871	51,839	83,068	57,782	71,942	70,343
		6	42	183	107	59
Gross Income	\$11,871	\$51,845	\$83,110	\$57,965	\$72,049	\$70,402
(1) Amounts are taken to nearest dollar.						

* Net profit on Merchandise. During 1913 and 1914, the cost of installing appliances was charged to Distribution Expense.

** This is the total for taxes as accrued, but the tax bills for 1915 already received indicate this should be increased about \$1,110.00.

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Comparisons between 1912 and 1913 indicate a small increase in gross revenue, but a much larger proportionate increase in the operating expenses, and this apparent inconsistency is so great as to require an explanation. An examination was accordingly made of the books of the company to determine the reasons for the inconsistency.

In the above discussion on the proper allowance for intangible values, it was stated that certain items claimed by the company, amounting in total to \$23,322.36, should properly have been charged to operating expenses instead of directly to the company's surplus or profit and loss account. Of this amount, \$5,749.17 is applicable to the year 1910, \$4,151.62 to 1911 and \$13,421.57 to 1912, and accordingly the operating expenses reported for those years were increased by these amounts to obtain the actual net revenues, shown in the table below, which were used in computing the excess or deficiency of return on the investment each year in Table X.

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TABLE XV.

	6 mos. 1910	year 1911	year 1912	year 1913	year 1914	10 mos. 1915
reported,	\$28,122	\$68,595	\$83,131	\$115,962	\$117,268	\$98,858*
di-						
rectly against surplus.....	5,749	4,152	13,422			
Total operating expenses.....	\$33,871	\$ 72,747	\$ 96,553	\$115,962	\$117,268	\$ 98,858*
Total revenues reported.....	89,998	120,441	166,241	173,928	189,210	164,201
Actual net revenue	\$ 6,122	\$47,694	\$ 69,688	\$ 57,966	\$ 71,942	\$ 70,348

* See note ** below Table XIV relative to \$1,110 increased taxes for ten months .

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Even after making the above adjustments, the net revenue for 1913 was still, apparently, considerably less than that for 1912. In the preceding table of operating revenues and expenses it will be noticed that, whereas there was an increase of \$14,047.44 in the total revenues from the sale of gas for 1913 over those for 1912, there was an increase in total operating revenues of only \$7,545.20, the difference being almost entirely a decrease in the net revenue reported for merchandise and jobbing, of which a large part of the expenses in 1912 were not unlikely charged against the new business reserve set up on the books at the time when the above mentioned donation of \$17,000 was received, and, therefore, did not form a part of either the reported operating expenses or the deductions from the gross merchandise and jobbing revenue. In case the net revenues from such operations were over-stated by at least the above amount, the total net revenues of the company for 1912 did not exceed \$62,142.99, an amount not quite sufficient to meet the \$63,375 interest accrued on its bonds during the year, and it would therefore seem not improbable that the reason for charging \$13,000 of expenses directly to profit and loss, and for setting up this reserve of \$17,000, was to cover up enough items of operating expense to make it appear that the company not only earned its bond interest but had a net income of \$18,000, from which to declare a dividend on its capital stock.

Of the \$17,000 expense charged against the new business reserve, \$3,128.43 were definitely ascertained to cover items that ordinarily would have gone to operating expenses, and adding this to the \$96,553.11 in the above table gives \$99,681.54 as the total operating expenses for 1913.

The following table shows for each of the years as given the average production expenses, other operating expenses and total operating expenses per M. cubic feet of gas sold.

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TABLE XVI.

	1911		1912		1913		1914		1915*	
	Amount	Per M.	Amount	Per M.	Amount	Per M.	Amount	Per M.	Amount	Per M.
Production expenses.....	\$41,478	43.5¢	\$51,364	42.3¢	\$58,379	43.2¢	\$58,398	39.8¢	\$47,271	37.0¢
Other operating expense	31,269	32.8	48,318	39.8	57,583	42.7	58,870	40.0	46,586	36.4
Total operating expenses	\$72,747	76.3	\$99,682	82.1	\$115,962	85.9	\$117,268	79.8	\$93,857	73.4

* 10 months.

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It will be seen from the above table that there has been scarcely any change in the unit production cost from 1911 to 1913, and 1914 and 1915 show decreases.

This average was based on the number of M. cubic feet of gas sold instead of the number manufactured for the reason that there was no accurate record of same during 1912, the station meter being reported out of order a large part of the time. Quite a marked increase is shown in the unit cost for the total "other operating expenses" in 1912 over those of 1911, and a slight increase in 1913 over 1912. This is largely accounted for, as above explained, by the greater amount of construction done during the earlier years, as indicated by Table IX, whereas 1914 and 1915 show substantial decreases.

From the above it appears that the operating expenses of the New Jersey Gas Company have been understated rather than overstated, but there still remains to be considered the question whether or not those expenses, even though actually incurred, were all reasonably necessary or in other words, has the plant been operated as economically or efficiently as might well be expected? In the following table, the unit operating costs of the New Jersey Gas Company are compared with those of other companies in the state operating under somewhat similar conditions, for 1914, the latest year for which the figures are available.

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TABLE XVII.

	No. M. Cu. ft. gas sold in 1914.	Production expenses per M. cu. ft. of gas made.	Other operating expenses per M. cu. ft. of gas sold.	Total operating expenses per M. cu. ft. of gas sold.	
Public Service, Central Division.....	453,413		27.95	36.39	67.24
Elizabethtown system	609,804		24.30	29.41	54.72
Consolidated Gas Company.....	220,996		33.85	40.19	79.68
New Jersey Gas Company.....	146,633		31.93	37.93	77.75
Coast Gas system.....	97,594		34.28	52.48	92.56

As compared with those of the other companies in the above table, the unit costs of the New Jersey Gas Company cannot be said to be unduly high. Because of their much greater output, the first two naturally have a considerably lower unit production cost, while that of the New Jersey Gas Company, by reason of its more uniform output throughout the year, might possibly be expected to compare somewhat more favorably with those of the Coast Gas System and the Consolidated Gas Company, both of which do the greater part of their business during the summer months. Because its distribution system for the most part extends through a thinly settled territory, its number of customers per mile of main being only 31, whereas that of the Consolidated Gas Company is 75 and of the Coast Gas System 61, it would naturally be expected that the cost of meter reading, attending to complaints, removing and re-setting meters, should be higher in the case of the New Jersey Gas Company, and that therefore its average operating expense per unit of product other than the cost of production should be somewhat higher than that of any of the

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companies in the above table, but its average for such expense is lower than that of either the Coast Gas Company or the Consolidated Gas Company, and is only very slightly above that of the Central Division of the Public Service Gas Company, the division which conforms most closely with the territory served by the New Jersey Gas Company, although considerably more densely populated. It therefore seems reasonable to conclude that the plant of the New Jersey Gas Company has not been operated inefficiently, and that the total amount of operating expenses shown in Table XIV should be included as one of the items in determining the reasonableness of the existing rates.

RATE OF RETURN.

In the memorandum on the rates of the Public Service Gas Company, Passaic Division, issued Dec. 26th, 1912, the Board said:

"We do not contend that any particular rate of return is applicable in all cases. In our judgment the rate of return to which a public utility is reasonably entitled is a question of fact to be determined in the light of all the evidence, and on the consideration of all of the facts in each particular case.

"It is clear, however, that the rate of return must suffice to attract the capital, which in the case at bar, is large in amount, required year by year in making the additions and extensions to manufacturing plant and distribution system which the growth of the communities served demands."

The rate of return should be sufficient to cover the reasonable and proper costs of obtaining necessary capital. In the case of the New Jersey Gas Company, it is known that the bonds issued netted the company about 80% of the par value of the bonds issued. These bonds bore interest at 5%. This is equivalent to an interest rate of 6.25% on the proceeds of the bonds.

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In addition to this, in accordance with the accounting system adopted by the Commission, which is in line with modern financial methods, it will be necessary to amortize the bond discount.

We have computed that the bond discount will be equivalent to 2-3 of 1% per annum based on 30 year term; on 25 years to maturity 0.8% is required. This indicates that a net return of approximately 7% on the value of the property is essential in order to enable the company to pay interest on bonds issued for actual construction.

To the extent that funds for actual construction were realized from bonds, this appears to be the situation. This does not necessarily apply to so much of the funds actually needed for construction as were raised from sale of stock. In an enterprise of the sort, free capital should bear a proper relation to bonded indebtedness.

The following three tables show the total amount and the average per M. cubic feet of all gas sold, which would be necessary for the company to collect each year from its customers, in order to pay its operating expenses, to provide for the accrued depreciation on its plant, and to earn a return on the valuation of its total investment in the property at five different rates of return. The valuation for 1913 is the one arrived at in Table XII, and for each of the other three preceding years the valuations are those given in Table X. The operating expenses for each year are taken from Table XV. The amount of depreciation for 1913 is the estimated amount of accrued depreciation for one year on the valuation of the physical plant as of July 1st, 1913, computed for each class of property at various rates on a straight line basis. The amount of depreciation for each of the other preceding three years was obtained by apportioning, on the basis of the average value of the physical property in each year, the amount

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of accrued depreciation from July 1, 1910, to June 30, 1913, given in Table IX, less one half of the accrued depreciation for 1913 as applicable to the first six months of that year. The capital and depreciation for 1914 and 1915 are ascertained by deducting value new, present value and annual depreciation for capital retired, and adding same for new capital installed, thereby bringing the valuation down to each subsequent date.

TABLE XVIII.

Table showing cost, per 1,000 ft. of gas without separation of street lights from metered gas and disregarding sundry sales.
The valuation is as of July 1st in each year accrued on basis of 6½ return on capital.

	1910	1911	1912	1913	1914	1915	Composite Total for period	Arith- meti- cal Aver- age rate
	6 mos. operation	12 mos.	12 mos.	12 mos.	12 mos.	10 mos.	Per M. for cu. ft. period	
1. Gas sales in 1,000 cu. ft. \$40,068	\$ 95,426	\$ 121,526	\$ 134,995	\$ 146,633	\$ 127,897	\$ 666,545		
2. Valuation as of July 1st in each year, on which return is based. (Tables IX and X)	515,111	706,240	1,017,190	1,141,619	1,173,105	1,199,936*	5,495,645	
3. Operating expenses, taxes, sundry sales not considered	33,871	72,747	99,682	115,962	117,268	94,968***	534,498	\$0.802
4. Annual depreciation	6,901**	18,786**	27,057**	30,782	30,920	26,921*	141,367	0.212
5. Total revenue deductions. 40,772	91,533	126,739	146,744	148,188	148,188	121,889	675,865	1.014
6. 6½% return on valuation above	16,741	45,906	66,117	74,205	76,252	65,477*	344,698	.517
7. Amount to be raised, 6½% return on capital. 57,513	137,439	192,856	220,949	224,440	224,440	187,366	1,020,563	1.531
8. Rate per 1,000 cu. ft. of gas sold	1,485	1,440	1,587	1,687	1,581	1,465*	1,531	1.516

9. Amount to be raised 7% return on capital	58,801	140,969	197,942	226,657	230,306	192,402	1,047,077
10. Rate per 1,000 cu. ft. of gas sold	1,468	1,477	1,629	1,679	1,571	1,504	1,571 1,555
11. Amount to be raised 7½% return on capital.	60,089	144,501	203,028	232,365	236,171	197,439	1,073,598
12. Rate per 1,000 cu. ft. of gas sold	1,500	1,514	1,671	1,721	1,611	1,543	1,611 1,598
13. Amount to be raised 8% return on capital.....	61,376	148,032	208,114	238,073	242,037	202,476	1,100,108
14. Rate per 1,000 cu. ft. of gas sold	1,532	1,551	1,712	1,734	1,651	1,583	1,651 1,632

* Basis for 10 months 83.95%.

** Depreciation taken at 2.66% per annum on Capital.

*** This includes \$1110 added for increases in taxes over accrued amounts.

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In the foregoing table three facts are apparent, viz:

1st. The figures for the year 1914 are almost an exact weighted average for the entire period.

2nd. During several of the years, the cost of installing appliances has been charged to Distribution Expense; the revenue from Sundry Sales should, therefore, be deducted from Operating Expense in order to ascertain the amount to be raised on account of gas operating expense.

3rd. No distinction has been made between *gas only* supplied to meters, and gas supplied for street lamps. Street lights require special fixtures and maintenance, in addition to the gas used. It would appear to be desirable to distinguish between the cost of the gas supplied to meters, gas supplied to street lamps, and the total cost of street lamps for gas plus maintenance and use of capital.

4th. No provision has been made for a wholesale rate.

In what follows we shall, therefore, assume the valuation as fixed at \$1,141,619, as of July 1, 1913 (see Table XII) and that 6½% is to be earned on capital, that revenue from Sundry Sales is to be credited to Operating Expense, and that deficits from the rate actually charged by the company are to be carried forward in Intangible Capital. Where property is used jointly for metered and street light gas, the apportionment of interest and expense is made in proportion to the gas used; street light gas is charged with 1% of Commercial Expense and 2% of Uncollectible Bills. Where capital or Operating Expense pertains exclusively to one or the other kind of gas, the debits are made accordingly. The cost for retail gas when provision is made for wholesale rate is shown in footnotes.

The Tables following are made up in accordance with the foregoing assumptions.

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TABLE XIX.
TABLE SHOWING THE COST OF GAS DURING 1913.

12 months. Capital as shown in Table X; rate of return—6.5%.

	FOR METERS		FOR STREET LAMPS			
No allowance for whole-sale rate is made. See Note 1:	Amount	Per M. cu. ft.	Total cost: Amt.	Per M.	For gas only Amt.	Per M.
OPERATING						
Operating expenses, excluding annual depreciation	\$ 94,783	0.754	\$10,521	1.140	\$ 5,646	0.611
Deduct Sundry Sales Revenue	3,558	0.028				
Est. operating expenses, excluding annual depreciation						
	91,225	0.726	10,521	1.140	5,646	0.611
Taxes	9,565	0.076	660	0.071	342	0.037
Uncollectible Bills	425	0.003	9	0.001	9	0.001
Annual Depreciation ...	29,050	0.231	1,732	0.387	1,427	0.155
Total Revenue Deductions net						
	\$130,265	1.036	\$12,922	1.399	\$ 7,424	0.804
CAPITAL						
6.5% on \$1,064,860	69,216	0.550				
" " 76,759			4,989	0.541		
" " 60,747					3,949	0.429
Total Amounts to be Raised						
(1)	\$199,481	1.586	\$17,911	1.940	\$11,373	1.233
(2)						
Revenue from Gas Sales						
(1)	159,616	1.269	10,569	1.145	7,046	0.763
Deficits to be Included in Intangibles for following years						
	39,865	0.317	7,343	0.795	4,327	0.470

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6.5% on above deficits ..	2,591	477	281
Gas Sales in 1,000 cu. ft.			
(1) 125,768	9,227	9,227	
(1) \$,000,000 cu. ft. of this is industrial gas. To sell this at 76¢ per M. cu. ft. requires the retail rate to be increased to \$1.628.			
(2) Estimated at two-thirds of all lamp revenue.			

TABLE XX.

TABLE SHOWING THE COST OF GAS DURING 1914.

12 Months. Capital as shown in Table X, adjusted for extensions and withdrawals; Rate of Return, 6.5%.

OPERATING No allowance for whole- sale rate is made. See Note 1.	FOR METERS		FOR STREET LAMPS	
	Amount	Per M. cu. ft.	Total cost: Amt. Per M.	For gas only Amt. Per M.
Operating Expenses, ex- cluding annual depre- ciation	\$96,165	0.700	\$10,178 1.097	5,094 0.550
Deduct Sundry Sales Revenue	4,707	0.034		
Net Operating Expense, excluding annual de- preciation	\$ 91,458	0.666	\$10,178 1.097	\$ 5,094 0.550
Taxes	9,660	0.070	643 0.070	322 0.035
Uncollectible Bills	610	0.005	12 0.001	12 0.001
Annual Depreciation ...	29,318	0.213	1,602 0.173	1,305 0.140
Total Revenue Deduc- tions, Net	\$131,046	0.954	\$12,435 1.341	\$ 6,733 0.726
FOR CAPITAL				
6.5% on \$1,051,305	68,335	0.497		
" " 71,036			4,617 0.498	
" " 55,484				3,606 0.389
" " 1913 deficits in Table XIX	2,591	0.019	477 0.051	281 0.030

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Total Amounts to be Raised							
	(1)	\$201,972	1.470	\$17,529	1.890	\$10,620	1.145
Revenue from Gas Sales						(2)	
	(1)	174,867	1.269	10,186	1.093	6,757	0.728
Deficits to be included in Intangibles for following years		27,605	0.201	7,393	0.797	3,863	0.417
6.5% on above deficits..		1,794		481		251	
Gas Sales in 1,000 cu. ft.							
	(1)	\$187,359		\$ 9,274		\$ 9,274	

(1) About 6,000,000 cu. ft. of this is industrial gas; to sell this at 76¢ per M. cu. ft. requires the above rate of \$1.47 to be raised to \$1.508.
(2) Estimated at two-thirds of street lighting revenue.

NOTE—The total combined capital for meters and for street lamps maintained shown above will be different from that shown in Table XVIII because the revenue from Sundry Sales has been deducted from operating expenses in 1913, thereby decreasing the net deficit carried forward to 1914 as intangible capital.

TABLE XXI.

TABLE SHOWING THE COST OF GAS DURING 1915.

10 Months. Capital as shown in Table X, adjusted for extensions and withdrawals; Rate of return 6½%.

	FOR METERS			FOR STREET LAMPS		
No allowance for whole-sale rate is made. See Note (1)	Amt.	Per M. cu. ft.	Total cost:	For gas only	Amt.	Per M. cu. ft.
			Amt.	Per M. cu. ft.		

OPERATING

Operating expense, excluding annual depreciation	\$ 75,060	0.626	\$ 7,991	0.999	\$ 4,209	0.526
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Deduct Sundry Sales revenue	2,288	0.019					
Net Operating Expense, excluding annual de- preciation	\$ 72,772	0.607	\$ 7,991	0.999	\$ 4,209	0.528	
Taxes	10,424	0.087	661	0.088	360	0.045	
Uncollectible Bills	814	0.007	17	0.002	12	0.002	
Annual Depreciation ...	25,553	0.213	1,310	0.163	1,071	0.134	
Total Revenue Deduc- tions, Net	\$109,563	0.914	\$ 9,979	1.247	\$ 5,652	0.707	
FOR CAPITAL							
6½% on \$1,039,782 (2).	56,901	0.474					
(84.19% of same for 10 mos.) \$69,452....							
(80.36% of same for 10 mos.) \$54,105....			3,628	0.454			
(80.36% of same for 10 mos.).....					2,826	0.354	
6½% on 1913 deficits (12 mos.) interest of \$2,591 .....(2)	2,181	0.018	383	0.048	226	0.028	
6½% on 1914 deficits (12 mos.) interest of \$1,794	1,510	0.013	386	0.048	202	0.025	
Total Amounts to be Raised							
(1) \$170,155	1.419	\$14,376	1.797	\$ 8,906	1.114		
Revenue from Gas Sales				(3)			
(1) 153,043	1.277	8,870	1.109	5,915	0.740		
Deficits to be included in Intangibles for fol- lowing years	17,112	0.142	5,506	0.688	2,991	0.374	
6½% on above deficits..	1,794		481		251		
Gas Sales in 1,000 cubic feet, 10 mos. (1)	\$119,900		\$ 7,997		\$ 7,997		

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- (1) Includes about 6,000 M. cu. ft. gas in 10 months at 76¢. To give a wholesale rate of 76¢ would require above rate to be raised to \$1.454.
- (2) Interest based on ratio of 10 months' gas sales in 1914 to entire year's sales; 84.19% for metered gas and 80.36% for street lamps, or 83.95% on the two combined.
- (3) Estimated at two-thirds of street light revenue.

NOTE—The total combined capital for meters and for street lamps, maintained shown above, will differ from that shown in Table XVIII, because the revenue from Sundry Sales for 1913 and 1914 was deducted from operating expense and the deficits for 1913 and 1914 carried forward in intangible capital, it will, therefore, be less.

COST OF STREET LAMPS.

In Tables XIX, XX and XXI it is shown that the cost of gas used in street lamps has been as follows:

During 1913	\$1.233 per 1,000 cu. ft.
1914	1.145 " " " "
1915 10 mos.	1.114 " " " "

The type of lamps, and their present value, vary so largely that we will deduce the cost of the Boulevard type with mantle burners, based on their cost to reproduce new, as determined in the valuation made by the Board's engineer.

TABLE XXII.

HIGH. PRESSURE LAMPS—BOULEVARD TYPE.

Cost per annum of Boulevard type street lamps, burning 5 cu. ft. of gas hourly for 4,400 hours; all fixtures and services furnished by company. Interest taken at 6.5%, depreciation at 2% and taxes 1%, a total of 9.5% per annum.

	1913	1914	1915
Cost of service, post, governor and head..	\$31.00		
9.5% of \$31 for int., etc.....	\$ 2.95	\$ 2.89	\$ 2.83
Mantles and globes (Ex. R-7 3-4-14)...	2.60		
Repairs	1.00		
Lamp Lighting	9.25	12.85	12.85
Cost for Capital and Special Maintenance.	15.80	15.74	15.68

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Cost of 22,000 cu. ft. @ \$1.233 1913.....	27.13		
“ “ “ “ “ “ 1.145 1914.....		25.19	
“ “ “ “ “ “ 1.114 1915.....			24.51
Cost of H. P. Lamps	42.93	40.93	40.19
Low Pressure Boulevard Type lamps do not have a governor, so that the cost of such lamps will be decreased by 9.5% of \$2.70, the cost of a governor, or, de- duct .....	.26	.26	.26
Cost of Low Pressure Lamps.....	42.67	40.67	39.93
Where Lamp-heads and maintenance are not furnished			
For Lamp-heads deduct 9.5% of \$6.30... .60			
Deduct cost of globes and lighting..... 11.85	12.45	12.44	12.43
Cost of lamps without heads operated by Welsbach Street Lighting Co. of America	30.22	28.23	27.50

When the company furnished the gas only, for street lamps, owned and maintained by others, the cost for the gas was as follows: 1913, \$27.13; 1914, \$25.19; and 1915, \$24.51.

Where the Welsbach Street Lighting Company of America furnishes the complete lamps, (post and heads) as in Glassboro, they charge \$16 per annum for each lamp to cover maintenance and use of capital. This compares very closely with the average figure of \$15.74 as shown above for the same items.

The peak load of the company occurs about noon during July and August. The street lighting gas does not affect this peak, and this should be taken into consideration in connection with the above figures of cost. Any increase in the present system will be necessitated by the peak load for meters and not by that of the street lamps.

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RECAPITULATION.

TABLE XVIII is based on the assumptions that capital and deficits from operation have been accumulated on a basis of *six and one-half per cent up to the given year*, that no separation has been made into wholesale and retail metered gas and street lighting gas, that the revenue from Sundry Sales has not been credited to Operating Expense for metered gas.

TABLE XXIII.

		Rate of return assumed to be			
		6.5%	7%	7.5%	8%
For 1910, 6 months	.....	\$1.435	\$1.468	\$1.500	\$1.532
1911, 12 months	.....	1.440	1.477	1.514	1.551
1912, 12 months	.....	1.587	1.629	1.671	1.712
1913, 12 months	.....	1.637	1.679	1.721	1.763
1914, 12 months	.....	1.531	1.571	1.611	1.651
1915, 10 months	.....	1.465	1.504	1.543	1.583
For the entire period:					
Weighted average	.....	1.531	1.571	1.611	1.651
Unweighted average	.....	1.516	1.555	1.593	1.632

Tables XIX, XX and XXI are based on a valuation fixed as of July 1st, 1913, on a 6.5% return on capital and Sundry Sales are credited to Operating Expense, and kinds of gas are separated. The following shows the rates so deduced.

TABLE XXIV.

		METERED GAS	METERED GAS	Gas only for
Year		No Industrial Rate	Industrial at 76¢	Street Lamps
1913	12 months..	\$1.586	\$1.628	\$1.233
1914	12 months..	1.470	1.503	1.145
1915	10 months..	1.419	1.454	1.114

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EFFECT OF THE VINELAND SITUATION ON THE RATE.

The following rates for metered gas, other than industrial, are in force in the territory of the New Jersey Gas Company, viz:

In Vineland and Landis Township—A flat rate of \$1.00 per 1,000 cu. ft.

In Swedesboro—A rate of \$1.50, less 10% for prompt payment, or \$1.35 net, for ordinary meters, and \$1.40 for prepayment meters.

Elsewhere—A rate of \$1.50, less 8% for prompt payment, or \$1.38 net, for ordinary meters, and \$1.40 for prepayment meters.

In addition to the difference in rate the New Jersey Gas Company has competition in Vineland Borough and in Landis Township, the other Gas Company operating in these municipalities at the same rate of \$1.00 per M. cu. ft.

Out side of Vineland and Landis Township, the average rate for metered gas is about \$1.394 per M. cu. ft., and we will now show what will be the effect on the income of the New Jersey Gas Company for the years 1913 and 1914 under the following assumptions, viz:

(1) That, with the exception of about 6,000 M. cu. ft. of industrial gas per annum, sold at an average price of 76 cents per M. cu. ft. to a single consumer, all the other gas in Vineland, amounting to about 29,057 M. cu. ft., had been sold at the uniform rate of \$1.394 during the year 1913.

(2) That the assumption (1) be made with the further assumption that the New Jersey Gas Company also served the consumers in Vineland Borough, which were actually served by the Citizen's Gas Company of Vineland at the uniform rate of \$1.394 during the year 1913.

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(1) RESULT OF A UNIFORM RATE OF \$1.394 IN VINELAND.

This rate would have added \$0.394 on 29,057 M. cu. ft. of gas sold in Vineland and Landis Township, a total increment of \$11,448 in revenue for 1913. There were no municipal street lights in Vineland during 1913, so that we may add this \$11,448 to the metered gas revenue of \$159,616 shown in Table XIX increasing same to the amount of \$171,064, at the same time decreasing the deficit of \$39,865 to \$28,417, and decreasing the annual interest (@ 6½%) on the deficit carried forward, in intangible capital, from \$2,591 to \$1,847. The effect of this on the 1914 rate, as shown in Table XX would be a decrease of \$0.006 in the retail rate of \$1.503, reducing it to \$1.497. As the deficits are to be carried forward from year to year, until amortized, the retail rate of \$1.454 for 1915 (Table XXI) would have decreased to \$1.448 by reason of the decreased deficit in 1913, and would have been further decreased by the smaller 1914 deficit. The effect would be cumulative and comparable to an annuity at compound interest.

(2) EFFECT OF A UNIFORM RATE OF \$1.394 IN VINELAND, AND ALSO OF TAKING OVER THE SALES IN VINELAND BOROUGH DURING 1913 OF THE CITIZENS GAS COMPANY OF VINELAND (AS IF THERE HAD BEEN BUT ONE COMPANY).

The latter company sold 6,590 M. cu. ft. of gas during 1913 and 8,491 M. cu. ft. during 1914 in Vineland Borough. Under our assumptions, the 1913 revenue of the New Jersey Gas Company would have been as follows:

Township of Mantua et al. vs. New Jersey Gas Co.

TABLE XXV.

(For 1913.)

Actual revenue received for all metered gas, 1913.....	\$159,616
Add 29,057 x \$.394 for N. J. G. Co.'s Vineland sales.....	11,448
Add 6,590 x 1.394 for C. G. Co's Vineland sales.....	9,186
<hr/>	
Combined hypothetical revenue for 1913.....	\$180,250
The cost of securing this revenue is estimated thus:	
Operating expense as in Table XIX	\$130,265
Add for fuel and oil	2,315
Add for distribution and other expense.....	492
Add for 195 new services.....	\$3,178
(assuming 200 to be duplicated by the two companies)	
Add for 395 PP meters	3,950
<hr/>	
New capital needed	\$7,128
Interest @ 6.5% on \$7,128.....	463
Depreciation on \$7,128.....	285
Interest on \$1,064,860 @ 6.5% (Table XIX).....	69,216
<hr/>	
Total amount to be raised	203,036
<hr/>	
Hypothetical deficit in 1913	\$ 22,786

To ascertain the rate to be paid by the retail consumer, deduct the \$4,560 received for industrial gas from the above amount of \$203,036, leaving \$198,476; this is to be raised from the following gas sales, viz.:

TABLE XXVI.

Metered gas sold, as per Table XIX.....	125,768 M. cu. ft.
Add for C. G. Co.'s consumption taken over.....	6,590 M. cu. ft.
<hr/>	
Subtotal for all hypothetical metered gas.....	132,358 M. cu. ft.
Deduct industrial gas sales of.....	6,000 M. cu. ft.
<hr/>	
Leaving hypothetical retail gas sales of.....	126,358 M. cu. ft.

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Dividing the above \$198,476 by 126,358 gives a hypothetical retail rate of \$1.571 as compared with the rate of \$1.628 shown in note (1) of Table XIX (the 6,000 M. cu. ft. of industrial gas being estimated at 76c. per M. cu. ft.).

In a similar manner we show the results of assumption (2) for the year 1914 in

TABLE XXVII.

(For 1914.)

Actual revenue received from ALL metered gas in 1914.....	\$174,367
Add 33,390 x \$0.394 for N. J. G. Co.'s sales in Vineland.....	13,156
Add 8,491 x \$1.394 for C. G. Co.'s sales in Vineland.....	11,886
Combined hypothetical revenue for 1914.....	\$199,359
The cost of securing this revenue is estimated thus:	
The Operating Expense as in Table XX.....	\$131,046
Add for production expense (fuel, oil).....	2,734
Add for distribution and other expense.....	670
Add for 395 customers, 1913.....	\$7,128
Less one year's depreciation.....	285
Present value in 1914.....	\$6,843
Add for 87 customers in 1914	2,288
Added capital for 1914.....	\$ 9,131
Depreciation on \$9,416.....	376
Interest on \$9,131, 6.5%.....	593
Interest on \$1,051,305 @ 6.5%, Table XX.....	68,385
Interest on hypothetical deficit of \$22,789.....	1,481
Amount to be raised in 1914.....	\$205,235
Hypothetical deficit in 1914.....	\$ 5,876

To ascertain the rate to be paid by the retail consumer, deduct the \$4,560 received for industrial gas as estimated for 1914 from \$205,235, leaving \$200,675 to be raised from the following retail gas sales, viz.:

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TABLE XXVIII.

(1914)

Metered gas sold, as per Table XIX.....	137,359 M. cu. ft.
Add for C. G. Co.'s sales in Vineland, 1914.....	8,491 M. cu. ft.
<hr/>	
Subtotal for all hypothetical metered gas.....	145,850 M. cu. ft.
Deduct industrial gas sales estimated at.....	6,000 M. cu. ft.
<hr/>	
Leaving hypothetical retail gas sales of.....	139,850 M. cu. ft.

Dividing the above amount of \$200,675 by 139,850 gives a hypothetical retail rate of \$1.435 for 1914.

The sales of the Citizens Gas Company of Vineland for ten months of 1915 for continuation of this assumption are not available, but a comparison of the deficit in Table XXV, for 1913, with that in Table XXVII, for 1914, would seem to indicate that the deficit for the year 1915, under assumption (2) would have disappeared if the New Jersey Gas Company had received an average rate of \$1.394 for its retail gas sales in ALL its territory, increased by the sales of the Citizens Gas Company for that year.

IN RE THE INDUSTRIAL RATE OF 76C. PER 1,000 CU. FT.

A classification of the customers according to the well known division of costs into customer, demand and product used has not yet been made, but a consideration of the following facts will show that the rate of 76c. is of some benefit to the company, viz.: taking the figures from the results for 1915 (see Table XXI) the 76c. would pay for these items, viz:

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TABLE XXIX.

Production expense	100% of 0.3696 is	\$0.3696
Distribution expense	50% of 0.1112 is	0.0556
Commercial expense	1% of 0.0623 is	0.0006
New Business expense	1% of 0.0075 is	0.0001
General and Miscellaneous expense.....	1% of 0.0750 is	0.0007
Taxes, etc.,	50% of 0.0869 is	0.0435
Depreciation	75% of 0.2130 is	0.1597
Subtotal		0.6298
A balance towards interest of.....		0.1302
Total rate		0.76

If this rate were raised, the business would be lost entirely. The customer has already sought diligently for a reduction and has considered putting in an independent plant of his own. In such an event, the company would have to assess on retail gas, the difference between the production expense of 37 cents and the 76 cents, or 39 cents per M. cu. ft., on a consumption for 1915 of approximately 7,000 M. cu. ft., or \$2,730. This sum now helps to carry the excess capacity of the plant.

From the foregoing the conclusion is reached:

That the return to the New Jersey Gas Company from the sale of gas at its present charges is not in excess of a reasonable return upon the fair value of the company's property used and useful in supplying service to the public. The fair value thus referred to is actual value as determined in this investigation and not the par or market value of the company's securities.

The petition in this proceeding, therefore, will be dismissed. An order will so enter.

Dated January 18th, 1916.

W. H. Armour vs. Yantacaw Water Company.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

IT IS ORDERED that the complaint in this proceeding be, and it is hereby, DISMISSED.

Dated January 18th, 1916.

No. 326.

W. H. ARMOUR

VS.

YANTACAW WATER COMPANY.

W. H. Armour, pro se.

L. D. H. Gilmour, for respondent.

ORDER.

It appears that the respondent claims to be under no obligation to furnish service to complainant because of his failure to pay the full amount of the monthly rental to be paid by him for water service to his house, consisting of first and second story flats. It appears, further, that the complainant receives practically no service to the second story flat and, he alleges, an irregular and inadequate serv-

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ice to his first story flat. On one occasion, the Company made an adjustment of the charges, and complainant is willing to pay upon the basis then agreed upon, for his further service.

In this situation, it appears that there is a substantial dispute between the parties, pending a determination of which the complainant should not be deprived of service. If the parties are unable to agree upon a rate for the service given, inasmuch as the Company substantially admits the charges as to inadequacy of service and alleges it is financially unable to improve such service, this Board will determine the question. This matter is involved in the complaint of Water Commissioners against this Company and will be dealt with in the disposition of that complaint.

The Board of Public Utility Commissioners HEREBY ORDERS Yantacaw Water Company to continue the furnishing of water service to W. H. Armour at his residence at Delawanna.

This order shall be immediately operative.

Dated February 1st, 1916.

No. 327.

BOARD OF CHOSEN FREEHOLDERS OF MIDDLESEX COUNTY

VS.

DELAWARE & RARITAN CANAL COMPANY AND PENNSYLVANIA
RAILROAD COMPANY.

Complaint is made alleging failure of the Delaware and Raritan Canal Company to maintain a proper bridge at Albany Street in New Brunswick. The company denies any obligation to maintain the bridge. The Board will always assume jurisdiction over utilities under the Public Utility Act. It will not hesitate to direct a utility to comply with the

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laws of the state, and to conform to the duties imposed upon it thereby or the provisions of its own charter, but it will not assume such jurisdiction in a doubtful case. The burden of proof is held to rest upon the petitioner to establish an obligation on the part of the respondent to rebuild the bridge. The petitioner in the Board's judgment has not sustained this burden of proof.

George L. Burton, for Middlesex County.

L. D. H. Gilmour, for Public Service Railway Company.

Alan Strong, for Pennsylvania Railroad Company.

A. C. Streitwolf, for New Brunswick Board of Trade.

The petition alleges that there is a drawbridge over the canal or basin of the Delaware & Raritan Canal Company at the foot of Albany Street in the City of New Brunswick, where Albany Street, a public road, crosses said canal; that it is the duty of said Delaware & Raritan Canal Company to keep in repair a good and sufficient bridge over said canal or basin at said place; that the bridge at that place is of a very old and inefficient type because of its narrowness and general condition, and is unsafe, unfit and inadequate for the needs of traffic; and that it is the duty of the Delaware & Raritan Canal Company to erect a new bridge at said place.

Although, as above stated, the petition alleges that the bridge is unsafe and inadequate, the attorney for the petitioner stated that "That allegation did not apply to the respondent in any way." The theory upon which the matter is submitted to this Board is that the Board has power to require a public utility "to comply with the laws of this state, and to conform to the duties imposed upon it thereby or by the provisions of its own charter."

Albany Street, at the point where it crosses the Raritan River, forms a part of the main thoroughfare between New

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Brunswick and Newark, and is one of the oldest roads in the state. The first bridge across the Raritan River at that point was erected under the authority of an act of the New Jersey Legislature passed in 1790, which provided that said bridge shall be so constructed that one part of it, not less than sixteen feet, shall hoist or draw for the free passage of vessels, and that the bent whereon the said draw is to be constructed shall be set in such part of the bridge as will render the passage of vessels through the same the most easy, safe and convenient, and being so set, shall forever thereafter be supported and maintained by the subscribers who shall build the same, or their assigns, and that the subscribers shall at all times support, maintain and, if occasion shall require, rebuild said bridge, and at all times keep it in good and perfect repair, and fit and convenient for the passage of all travelers and others with their horses, carriages, goods, wares and merchandise, and also shall attend the draw and raise the same for all masted vessels. For the failure to maintain the bridge and keep it in good and perfect repair, or to attend the draw, the subscribers and their heirs or assigns shall be liable to indictment at the General Court of Sessions of the Peace in the Counties of Middlesex or Somerset, and, if convicted, to be fined; and shall also be liable to an action for damages at the suit of any party aggrieved by the said neglect or failure.

The proprietors of the bridge were incorporated by P. L. 1799, p. 528, under the name of "The Proprietors of the New Brunswick Bridge." Until the year 1875, it was maintained as a toll bridge.

The Delaware & Raritan Canal Company was incorporated under the public laws of 1830, p. 73.

The canal was constructed at the place in question by using the west bank of the river as the west bank of the canal, and by constructing cribbing in the river for the east bank,

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so that the canal forms a part of what was formerly the river. The evidence does not show whether or not a draw was constructed in any part of the bridge prior to the construction of the canal. There is no draw in the bridge, however, at any place, except that portion of it which crosses the canal. It is this portion of the bridge which the petitioner claims it is the duty of the respondent to repair and rebuild.

The proprietors of the New Brunswick Bridge transferred their rights therein to the Delaware & Raritan Canal Company after the formation of the latter corporation, and the bridge was continued as a toll bridge by the Delaware & Raritan Canal Company and its successor in title, the Pennsylvania Railroad Company, until the year 1875, when the petitioner in this case condemned it, in pursuance of public laws 1872, p. 1162, and public laws 1873, p. 445. These acts provide for the purchase or condemnation of the "toll bridge now erected across the Raritan River at the foot of Albany Street in the City of New Brunswick, together with the exclusive franchise enjoyed by the said proprietors to establish and maintain the bridge," and the Board of Chosen Freeholders were, by those acts, empowered to erect and maintain bridges over said Raritan River as freely as if no exclusive privilege had been granted to the proprietors. It appears that since 1875 the Board of Chosen Freeholders has maintained the bridge, and that while repairs have been made to the same at times by the respondent, Pennsylvania Railroad Company, the cost of said repairs has been assumed and paid by the petitioner. The petitioner claims, however, that this course of conduct is in no wise binding upon it. We agree with the petitioner's view that this long continued course of conduct on the part of the petitioner in the making of repairs and maintenance of the bridge does not raise a prescriptive right on the part of the

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respondents to the continuance of such maintenance by the petitioner. We think, however, that this course of conduct on the part of the petitioner for forty years is expositive of the view which the petitioner itself has long held as to its rights and duties in connection with the repair and rebuilding of the structure.

As the construction of the canal was within the river and did not require the building of a longer bridge than would be required if no canal existed, it cannot be said that any additional burden was placed upon the freeholders through the mere construction of the canal. The bridge without the canal waterway would be just as long, and the duty in such case to maintain it under the act of 1872 would appear to be upon the freeholders. It is contended, however, that the bridge across that portion of the river now used by the canal, spans a private waterway, and while the petitioner admits its liability to repair and rebuild all the rest of the bridge, it is not obliged to maintain that portion of it which crosses the canal. We are not furnished with any authorities from the statutes of adjudicated cases in support of this contention. While it is true that the act of 1830 creating the Delaware & Raritan Canal Company provides "that it shall be the duty of the company to keep in repair, good and sufficient bridges or passages over the said canal where any public or other rights shall cross the same," this statute should be read in connection with the act of 1872 under which the petitioner acquired title to the bridge in question, and assumed the duty of maintaining and rebuilding the same. The liability of the respondents to maintain any part of this bridge within that part of it which spans the canal, may be said to be at least doubtful in view of the provisions of the act of 1872 under which, as above stated, the freeholders took over the bridge.

This Board will always assume jurisdiction over utilities

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under the provision of the Public Utility Act quoted supra. It will not hesitate to direct a utility to comply with the laws of the state, and to conform to the duties imposed upon it thereby or the provisions of its own charter, but it will not assume such jurisdiction in a doubtful case. We think the burden of proof is upon the petitioner to establish an obligation on the part of the respondents to rebuild this bridge. The petitioner, has not, in our judgment, sustained the burden of proof resting upon it.

The petition will, therefore, be DISMISSED, and an order will so enter.

Dated February 1st, 1916.

ORDER.

This case having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

It is ORDERED that the petition in this proceeding be, and it is hereby, DISMISSED.

Dated February 1st, 1916.

This order was appealed to the Supreme Court by the Board of Chosen Freeholders. At the time of printing the matter is before the Court.

Monmouth Lighting Co. and Farmingdale Lighting Co.—Merger.

No. 328.

IN THE MATTER OF THE APPLICATION OF MONMOUTH LIGHTING COMPANY AND FARMINGDALE LIGHTING COMPANY FOR APPROVAL OF THE MERGER AND CONSOLIDATION OF SAID COMPANIES, SAID CORPORATIONS TO BE KNOWN AS MONMOUTH LIGHTING COMPANY.

Edmund Wilson, for petitioners.

Application is made for approval of the merger and consolidation of Monmouth Lighting Company and Farmingdale Lighting Company into a corporation to be known as Monmouth Lighting Company; the approval of a mortgage for \$3,000,000; and the approval of the immediate issue of \$38,000 of stock and of sufficient bonds to raise \$93,000 with which to cancel the present indebtedness of the existing companies; and for the approval of a lease by Middlesex & Monmouth Electric Light, Heat & Power Company, of some of its property to Monmouth Lighting Company for 990 years.

The Board will approve the merger and agreement of said companies, and will approve the mortgage for \$3,000,000 when amended as suggested by the Board, which suggestions the company agreed to adopt, and will approve the issue of \$38,000 of stock at par, and of sufficient bonds at 97½% of par to raise \$93,000.

Inasmuch as the bonds of both companies, to the amount of \$93,000 were issued at 80% of par, and this Board imposed upon said companies certain conditions with respect to the amortization of the bond discount, the certificate of approval will issue only upon the condition that the Monmouth Lighting Company, the resulting corporation, will

Water Commissioners vs. Yantacaw Water Co.

assume and perform the conditions heretofore imposed as to amortization.

The Board will not pass upon the question of the lease of certain property of Middlesex & Monmouth Electric Light, Heat & Power Company to Monmouth Lighting Company, until it appears to the Board that the terms of the lease are proper and reasonable, and further that a lease of the property is necessary and desirable in preference to merger and consolidation.

Dated February 1st, 1916.

No. 329.

WATER COMMISSIONERS OF DELAWANNA, DISTRICT No. 2

vs.

YANTACAW WATER COMPANY.

The Commissioners of Water District No. 2 of Delawanna complain of inability to obtain from the Yantacaw Water Company water in sufficient quantity for fire and domestic purposes. The complainants state that the Acquackanonk Water Company refuses to supply water in Delawanna without the consent of the Board of Public Utility Commissioners, and the Water Supply Commission. The Board holds that the residents of this district are entitled to a continuous supply of potable water, and the community, as such, is entitled to fire protection service if ready and willing to pay for it. It does not appear that such supply and service will be afforded by the respondent. The Board will look favorably upon the entrance into this field by any other water company having the necessary legal right to do so, with whom the Water Commissioners may contract.

William H. Young for the Water Commission.

L. D. H. Gilmour, for the Company.

Water Commissioners vs. Yantacaw Water Co.

In this proceeding, the Commissioners of Water, District No. 2, of Delawanna, which is a part of Acquackanonk Township, submitted a formal complaint, alleging that the service of the Yantacaw Water Company was insufficient for fire and domestic purposes. The Commissioners alleged that application had been made to the company for fire service, but that this request had been ignored and that no reply had been received from the company. Complainants further state that application had been made to the Acquackanonk Water Company for a supply of water for fire and domestic purposes, but that company had refused to supply the same unless the Board of Public Utility Commissioners and the Water Supply Commission should give their approval.

The allegation of the complainants in particular is to the effect that "the Yantacaw Water Company is inadequately equipped for the supplying of such water for the reason that after six hours of pumping, they are compelled to stop pumping for about two hours in order to allow the water to flow back into the well. Their storage capacity is inadequate and cannot supply the demand of the present consumers and for fire purposes. Their mains are inadequate for the reason that they are only 2 which makes it impossible for such mains to give sufficient volume of stream and pressure for fire purpose." Hearings in this matter were held on November 24th, 1915, and on January 26th, 1916.

At the hearing a number of residents of Delawanna testified to the effect that there had been times last summer when no water was available for several days at a time, and one period of several weeks passed with no water available. Testimony was submitted showing that on almost every day there was a lack of water in the second floors of residences, this condition lasting for a few hours at a time.

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Testimony was submitted by one of the Inspectors of the Board, who exhibited charts taken upon recording pressure gauges located respectively at the pump house and in the basement of the residence of Mr. B. Kunsch. The charts confirmed the statements made by the other witnesses who were customers of the company.

In the case of Mrs. E. E. Whitney against the Yantacaw Water Company this Board found that the Company did not furnish safe, adequate and proper service in that water was not available on the second floor of complainant's house, and ordered the Company to supply water under such pressure that there would always be an adequate supply at the fixtures on the second floor of complainant's house.

Testimony shows conclusively that the Company has not given continuity of water service on the second floors of the residences which it pretends to serve.

The residents of this district are entitled to a continuous supply of potable water, and the community, as such, is entitled to fire protection service if they are ready and willing to pay for the same. It does not appear that such supply and service will be afforded by the respondent. The applications of the Water Commissioners indicate that they are willing to enter into a contract for the supply of water for fire purposes. It appears there is a company ready to provide such service.

The Board concludes and determines that the Yantacaw Water Company has failed to furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so.

The Board will look favorably upon the entrance into this field by any other water company having the necessary legal right to do so, with whom the Water Commissioners may contract.

Dated February 7th, 1916.

N. J. Power and Light Co. et als.—Sale of Property, etc.

No. 330.

IN THE MATTER OF THE APPLICATION OF NEW JERSEY POWER & LIGHT COMPANY TO ISSUE COMMON STOCK, PREFERRED STOCK AND BONDS, AND OF THE EASTERN PENNSYLVANIA POWER COMPANY OF NEW JERSEY, JERSEY POWER COMPANY AND PENNSYLVANIA UTILITIES COMPANY, FOR PERMISSION TO SELL PROPERTY, ETC.

The Board finds the value new of property involved in this reorganization to be \$884,319 on account of which it will permit the New Jersey Power & Light Company to issue \$650,000 bonds at not less than 86% of par, \$161,000 of preferred stock at par, and \$164,300 of common stock at par. It will issue the further certificates required to carry out the reorganization proposed.

As a condition precedent to the issue of the necessary certificates by the Board, we will require the retirement and cancellation of the outstanding capital stock of Eastern Pennsylvania Power Company of New Jersey, to the amount of \$58,000 and the filing of a stipulation that reorganization of said company and the properties operated by it will be made prior to July 1st, 1916, in which the capital stock will be further reduced to correspond with the value of the property supporting same; and of the retirement of outstanding securities of the other companies to this proceeding issued on account of the property involved herein.

The New Jersey Power and Light Company will be required to set up accrued depreciation in the sum of \$105,229; and will be required to amortize the discount of the bonds herein permitted to be issued.

Bradley Beach vs. Atlantic Coast Electric Railway Co.

Approval will be further subject to the filing of a stipulation by which the New Jersey Power & Light Company undertakes to comply with any conditions as to service and extensions of property heretofore imposed upon any of the companies to this proceeding.

Dated February 9th, 1916.

No. 331.

BRADLEY BEACH

vs.

ATLANTIC COAST ELECTRIC RAILWAY CO.

Petitioner asks the Board to require the Atlantic Coast Electric Railway Company to furnish passengers boarding its north-bound cars in Bradley Beach with transfers good on the cars operated on its system in Asbury Park and with like transfers to passengers boarding its cars in Asbury Park and desiring to ride to Bradley Beach.

The Board holds that there is nothing in the Bradley Beach ordinance fixing the fare which can be construed to operate as a bar against the transfer asked for, nor could the reference to the rate of fare therein deprive the Board of any of the powers delegated to it by statute.

The Board concludes that the practice of charging passengers from Bradley Beach an extra five cent fare to points along the line of Cookman Avenue in Asbury Park is unjust and unreasonable, and concludes also that the practice of charging passengers from Bradley Beach an extra five cent fare to points along the line of Cookman Avenue in Asbury Park while permitting passengers from Roseld Avenue, Deal and Allenhurst to go over its lines to any part of Asbury Park is unduly and unjustly discriminatory.

Ward Kremer, for the petitioners.

Durand, Ivins & Carton and *Robert H. McCarter*, for the company.

Bradley Beach vs. Atlantic Coast Electric Railway Co.

Bradley Beach is a borough located about one-half mile from the southerly boundary line of Asbury Park and its petition sets forth that the Atlantic Coast Electric Railway Company operates a trolley line through its territory extending from Sea Girt to the corner of Cookman Avenue and Main Street, Asbury Park, which is the northern terminus of this branch. That at the said northern terminus this branch of the trolley system connects with another branch of the same system operated by the Atlantic Coast Electric Railway Company, which runs through (according to the map offered in evidence) Cookman Avenue, Kingsley Street and Eighth Avenue, then via the Long Branch division to Pleasure Bay.

The petitioners complain that it is a short ride, less than one mile from the southerly end and about a half mile from the northern boundary line of Bradley Beach to the intersection of Cookman Avenue and Main Street; that most of the patrons of the road desire to go to the stores and business places, or to the beach in Asbury Park and for this additional short ride they are required to pay an extra fare of five cents. This they claim is an unjust and unreasonable regulation.

The relief asked is that the railway company be required to furnish passengers boarding the north-bound cars in Bradley Beach with transfers good on the cars operated on its system in Asbury Park, and a like transfer to be furnished persons boarding its cars in Asbury Park desiring to ride to Bradley Beach.

The answer of the company sets forth (1) that its system is made up of several separate divisions, owned by different companies and that "the fare zones on the Belmar and Sea Girt line are fare divisions of said line by reason of ownership of the companies, extent of zone and territory accommodated"; (2) that because it operates some parts

Bradley Beach vs. Atlantic Coast Electric Railway Co.

of its system as lessee, to preserve and maintain the identity of separate divisions, the separate fares established by each company are necessary and that a regulation requiring it to carry passengers for the same fare over another fare zone, or line of another owner company, should not be imposed where a similar regulation could not be effective against the separate owner company; (3) that Bradley Beach had, by agreement, waived and abandoned any right for a transfer in Asbury Park; (4) that the granting of transfers would materially reduce its income; confuse the operation of its various divisions, and increase the hazard of operation.

It appears that the Atlantic Coast Electric Railway Company owns, or controls by lease, and operates a trolley line from Pleasure Bay, Long Branch, to Manasquan. In this distance there are five fare zones with established and defined overlaps for passengers going in either direction with the single exception of those who enter cars in the Bradley Beach zone going north. Their ride ends at Cookman Avenue, Asbury Park.

It is admitted by the company that these overlaps are permitted and have been established regulations of the company for many years. In proceeding from Long Branch the first overlap is from Lincoln Avenue, Long Branch, to Pearl Street, Deal; the next from Roseld Avenue, Deal (also Alenhurst) to the Deal Lake bridge. Proceeding south from Asbury Park, there is an overlap in Belmar from Fifth Street to Sixteenth Street. Similar overlaps are established on the routes north over the same line. In these zones a passenger is permitted to ride for a five cent fare over the tracks owned by the company and those leased by the company entirely independent of any ownership company fare as suggested in the answer of the respondent.

Bradley Beach vs. Atlantic Coast Electric Railway Co.

The majority of the passengers visiting Asbury Park from Belmar by trolley have as their object the reaching of a business place or some of the amusements on the beach front in that well known summer resort. Cookman Avenue is primarily the business thoroughfare. It runs easterly from Main Street to Kingsley Street practically at right angles with the trolley line from Belmar. Its whole length is built up with stores, shops and business places. From this important street nearly all large business places, not on it, can be readily reached. At the east end of it, which is within a block of the busiest and most attractive section of the ocean boardwalk, there are the Casino, the ocean pier, the Coleman House, the North End Hotel and Pavilion and numerous summer attractions. They have no such amusements at Bradley Beach.

There are two fare zones between Manasquan and Cookman Avenue, Asbury Park; the lower one to Sixteenth Avenue, Belmar, is 3.95 miles, and the upper one from the last mentioned point to Cookman Avenue is 3.21 miles.

It has been the practice of the company to permit a passenger boarding a car at Roseld Avenue, Deal, to continue his journey south through Deal, Allenhurst and then, if he so desires, around the whole circuit in Asbury Park. All persons living in the said portion of Deal and all of Allenhurst can, for a five cent fare, reach any part of Asbury Park covered by the Belt line. A similar privilege is demanded by Bradley Beach. The business of the company from the Deal and Allenhurst section is relatively a small proportion of its earnings, while the receipts of the Belmar division (which includes Bradley Beach) for the year 1914 amounted to \$119,217.25.

Exhibit R-2 shows there were 763,892 passengers to and from Asbury Park to Sixteenth Avenue, Belmar, between July 16th and December 1st, 1915, and according to Exhibit

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R-1 during the same period there were 154,248 passengers got off and on at Bradley Beach, showing a little over 20% of the business was furnished by the people of Bradley Beach. It is shown that the Belmar division furnishes 35% of the entire business of the railway company and brings a return of 4.25% upon the actual investment of the company in that division, while the return for eleven months from all branches of the system shows a net return of 3.36%. Surely, the territory furnishing such a substantial portion of the companies revenues ought not be subjected to prejudice or disadvantage by unfair discrimination. The company as a matter of sound business allows passengers from Deal and Allenhurst for a single fare to reach the same stores, places of business and amusements which the people of Bradley Beach desire to patronize and it ought to grant equal privileges to the passengers from Bradley Beach.

There can be no substantial or practical objection to the transfer demanded from an operating point of view. The company could easily make a regulation so far as any matters of operation or internal organization are concerned.

As we have previously stated Cookman Avenue is the thoroughfare from which most of the large stores and other business interests can be readily reached and its intersection with Kingsley Street forms the best possible outlet for persons desiring to visit the beach. It seems reasonable and proper that the patrons of the trolley company coming from Bradley Beach to Asbury Park should at least be allowed a transfer privilege good for a ride on the company's cars operating on Cookman Avenue as far east as Kingsley Street, and we so find and determine.

This does not extend the northerly line of the fare zone beyond Cookman Avenue, but it does afford a further ride of six or seven blocks on that avenue for those desiring it. It will also be noticed that this additional ride on Cookman

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Avenue nearly equalizes the fare zones between Manasquan and Belmar, and between Belmar and Asbury Park.

There is nothing, in our opinion, in the Bradley Beach ordinance which can be construed to operate as a bar against the transfer asked for; nor could the reference to the rate of fare therein deprive this Board of any of the powers delegated to it by the statute.

The competition between the jitneys and the trolley was referred to by counsel. We call attention to the fact that the jitney service is confined from points in Bradley Beach and Belmar to the corner of Cookman Avenue and Main Street. If the trolley company, by the transfer, delivers its patrons within a few feet of their desired destination for a nickel, the competition from which it now suffers will soon be of less importance.

We conclude, therefore, that the practice of charging passengers from Bradley Beach an extra five cent fare to points along the line of Cookman Avenue in Asbury Park is unjust and unreasonable. We further conclude that the practice of charging passengers from Bradley Beach an extra five cent fare to points along the line of Cookman Avenue in Asbury Park, while permitting passengers from Roseld Avenue, Deal and Allenhurst to go over its lines to any part of Asbury Park is unduly and unjustly discriminatory.

An order, therefore, will be entered directing the Atlantic Coast Electric Railway Company to give to persons boarding its northbound cars in Bradley Beach transfers to its car operating easterly on Cookman Avenue, permitting them to ride on Cookman Avenue easterly as far as Kingsley Street, Asbury Park, for five cents and to give to passengers on the westbound cars on Cookman Avenue transfers to southbound cars on the Belmar line, which last mentioned transfers shall be good for a ride on the Belmar line to the southerly boundary of Bradley Beach.

Dated February 9th, 1916.

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ORDER.

This case being at issue, upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report, containing its findings of fact and conclusions thereon, which said report by reference thereto is hereby made part hereof, the Board

FINDS AND DETERMINES that the practice of the Atlantic Coast Electric Railway Company in charging an extra five cent fare to points along the line of Cookman Avenue in Asbury Park to passengers from Bradley Beach is unjust and unreasonable, and further that the practice of charging passengers from Bradley Beach an extra five cent fare to points along the line of Cookman Avenue in Asbury Park while permitting passengers from Roseld Avenue, Deal and Allenhurst to travel over its lines to any part of Asbury Park upon the payment of single fares of five cents is unduly and unjustly discriminatory; and

HEREBY ORDERS the Atlantic Coast Electric Railway Company to give to all persons boarding its northbound cars in Bradley Beach, who on payment of fare of five cents on such cars request transfers to its cars operating easterly on Cookman Avenue, Asbury Park, said transfers, the same to be accepted by the company for a ride on Cookman Avenue easterly as far as Kingsley Street, Asbury Park; and

HEREBY FURTHER ORDERS the Atlantic Coast Electric Railway Company to give to all persons boarding its westbound cars on Cookman Avenue, who on payment of fare of five cents on such cars request transfers to its cars operating southerly on its Belmar line, said transfers, the same to be accepted by the company for a ride on its Belmar line to the southerly boundary of Bradley Beach.

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This order shall become effective March 3rd, 1916.

Dated February 9th, 1916.

An appeal from this Order was made to the Supreme Court, which filed the following decision.

NEW JERSEY SUPREME COURT. JUNE TERM, 1916.

ATLANTIC COAST ELECTRIC RAILWAY COMPANY, Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS AND BOROUGH OF BRADLEY BEACH, Defendants.

[Argued June 7, 1916. Decided December 1, 1916.]

SYLLABUS.

1. When a traction company, organized under the General Traction Act of 1893 (*P. L. p. 302; C. S. p. 5021*) obtains from a municipality an ordinance granting a location of street railway tracks, and accepts the same, a regulation of the rate of fares contained therein, if lawful and reasonable, constitutes a contract between the company and the municipality which during the life of the franchise remains inviolable, and it is incompetent for the Board of Public Utility Commissioners to impose upon the company an additional burden in violation of such contract respecting fares.

2. An ordinance passed by a municipality pursuant to the General Traction Act of 1893 (*P. L. p. 302; C. S. p. 5021*) granting a location of street railway tracks, and providing therein respecting the rate of fare that "no more than five cents shall be charged by the company" gives the company, when accepted by it, a contract right to charge a five cent rate, which rate cannot be reduced without the consent of the company.

3. Where an ordinance passed by a municipality pursuant to the General Traction Act of 1893 (*P. L. p. 302; C. S. p. 5021*) granting a location of street railway tracks, contained a restriction that the fare in a stated territory shall be "no more than five cents," and such ordinance is accepted by the company, such contract is binding both upon the company and the municipality, even though the territory covered by such fare zone is partly outside the corporate limits of the municipality.

On certiorari, etc.

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Before GUMMERE, *Chief Justice*, and JUSTICES TRENCHARD and BLACK.

For the Prosecutor, DURAND, IVINS and CARTON.

For the Board of Public Utility Commissioners, L. EDWARD HERRMANN and FRANK H. SOMMER.

For the Borough of Bradley Beach, WARD KREMER.

The opinion of the Court was delivered by
TRENCHARD, J.

The Atlantic Coast Electric Railway Company operates a trolley line or street railway from the junction of Main Street and Cookman Avenue in Asbury Park southerly through other municipalities and the Borough of Bradley Beach to Belmar. It also operates another branch from the northern terminus of the above described line, eastwardly along Cookman Avenue in Asbury Park and through that city and beyond.

On February 9, 1916, the Board of Public Utility Commissioners at the request of the Borough of Bradley Beach, after a hearing ordered "The Atlantic Coast Electric Railway Company to give to all persons boarding its northbound cars in Bradley Beach, who on payment of fare of five cents on such cars request transfers to its cars operating easterly on Cookman Avenue, Asbury Park, said transfers, the same to be accepted by the company for a ride on Cookman Avenue easterly as far as Kingsley Street, Asbury Park, and * * * to give to all persons boarding its westbound cars on Cookman Avenue, who on payment of fare of five cents, on such cars request transfers to its cars operating southerly on its Belmar Line, said transfers, the same to be accepted by the company for a ride on its Belmar Line to the southerly boundary of Bradley Beach."

This writ of certiorari, sued out by the Company, brings under review the validity of that order.

We are of the opinion that it cannot be sustained.

Among other reasons urged against the order is that "the ordinances under which the company is operating through Bradley Beach, on the Belmar and Sea Girt line, provide for a five cent fare to Cookman Avenue, Asbury Park, and exact from the company annual payments in consideration of the privileges granted, and are contracts between the company and municipalities, including the Borough of Bradley Beach, and the order of the Board of Public Utility Commissioners is in violation of these contracts, and illegal."

The company was organized under the General Traction Act of 1893 (*P. L. 302, C. S. p. 5021*) and in 1897 obtained from the Borough of Bradley Beach its ordinance above referred to. This ordinance was approved September 8th, 1897. It recites the application of the company for permission to construct, operate and maintain a new line of

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street railway through certain streets in accordance with a designated route, and grants such permission "to construct, operate and maintain a new line of street railway in, through and upon the public street or highway in said Borough of Bradley Beach, commonly known as the main public road leading from Asbury Park through the Borough of Bradley Beach to Belmar, called Main Street, and extending therein from the extreme northern boundary line of said Borough of Bradley Beach southwardly to the extreme southern boundary line of said Borough, conformably to the route designated," etc. This is the line in question.

The 12th section of the ordinance provides:

"That the rate of fare shall be five cents for the transportation of any passenger for one continuous ride on the cars of said company in any direction within the corporate limits of said borough, and *no more than five cents shall be charged by said company for the transportation of any passenger for one continuous ride in either direction on the cars of said company from Cookman Avenue in Asbury Park to any point in Belmar on the route on said railway, or to any other point on said route whenever said railway of said company shall be constructed and in operation over its said route between Asbury Park and the southern boundary line of the Borough of Belmar.*"

The 19th section provides that the permission, rights and privileges thereby granted to the company shall continue for a period of fifty years. The 20th section provides that as compensation for the rights and privileges thereby granted, the company shall, at its own cost and expense, grade and gravel stated portions of the street, and shall pay to the borough two hundred and fifty dollars annually during the fifty years for which the franchise is granted.

This ordinance was accepted by the company, the line between the two termini thereof was constructed and put in operation, a five cent fare was established thereon, and the company has hitherto fulfilled its obligations as imposed by the ordinance.

It was, of course, under the law, necessary for the company to secure the consent given by the ordinance before it could build its trolley line through Bradley Beach.

And paragraph 32 of the Traction Act (C. S. p. 5035) provides:

"That any consent required by this act to be given by any public body may be given by a resolution or ordinance of such body, which consent, when accepted by any corporation created under this act * * * shall have the force and effect of a contract."

The statute leaves the amount of compensation to be charged by such a company entirely open, there being no provision as to the rate of fares in the Act. Other provisions of the statute, however, require that the company, before it shall construct its line, shall present to the governing body of the municipality a petition and plan of con-

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struction, and the municipality, after consideration, shall "either pass a resolution refusing such location or pass a resolution or ordinance, as may be necessary or proper, granting the said location or any part thereof, *under such lawful restrictions as they deem the interests of the public may require;*" etc. (par. 7; C. S. p. 5025).

Now, in *Rutherford vs. Hudson River Traction Co.*; 44 Vr. 227, Mr. Justice Pitney for this Court, speaking of this legislative provision, said:

"The 'lawful restrictions' that are to be made in the interest of the public indicate, likewise, a legislative act. In short, the statute, as we take it, plainly imports that the common council or other governing body of the municipality is to perform a legislative function in granting a special user of the public highway to a traction company, and in setting bounds and limits to its user and imposing conditions thereon, while, on the other hand, the traction company likewise is dealt with as a public agency, and not a mere private entity; in its application to the council it not only seeks an opportunity for private profit, but it tenders itself a volunteer to the public service, offering to embark the capital of its stockholders in a public improvement and to assume correlative duties. The proceeding has for its purpose the completion of the general 'charter' of the company by the acquisition of a local 'franchise.' It results that when the franchise is granted, subject to conditions and restrictions, and when the traction company proceeds to lay its tracks in the street and run its cars thereon, that property and those franchises become impressed with a public use that imposes the duty upon every successive holder to serve the public in accordance with the terms of the original grant."

In view of the further provisions of the Act that the consent required by the Act to be given by the municipality, when accepted by the company "shall have the force and effect of a contract," it has, of course, been frequently held that the restrictions thus imposed, if lawful and reasonable, constitute a contract between the company and the municipality which hereafter remains inviolable.

Jersey City vs. Jersey City & Bergen Ry. 41 Vr. 360;

Jersey City vs. North Jersey St. Ry. Co. 43 Id. 384;

Newark vs. North Jersey St. Ry. Co. 44 Id. 265.

That regulations as to the rate of fare are properly classed among such "restrictions" seems quite plain.

Recently Mr. Justice Voorhees writing for the Court of Errors and Appeals, in *Reed vs. Inhabitants of Trenton*, 80 N. J. Eq. 503-506, said:

"That a municipality, as a condition precedent to granting permission to a traction company to construct and operate a street railway within its corporate limits has power to impose lawful restrictions, in the interest of the public, that *regulation of rates of fare are properly classed among such restrictions and come within the terms of the*

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statute, and that the acceptance of such an ordinance by the company constitutes a contract are too well settled to require discussion. The contract thus entered into is evidenced by the terms of the ordinance and is to be construed by the ordinary rules of law applicable to that subject."

As stated by the Supreme Court of the United States in *Detroit vs. Detroit Citizens' Street R. Co.*, 184 U. S. 368:

"The rate of fare is among the most material and important of the terms and conditions which might be imposed by the city in exchange for its consent to the laying of railroad tracks, and the running of cars thereon through its streets. It would be a subject for grave consideration and conference between the parties, and when determined by mutual agreement, the rate would naturally be regarded as fixed until another rate was adopted by a like agreement."

It is therefore well settled that one of the "restrictions" which the municipality under the legislative authority may impose, as a condition of its consent to the location of tracks within its corporate limits, is the rate of fare that shall be charged and such restriction, when the ordinance is accepted, becomes a contract. Any other interpretation of the statute is impossible particularly in view of the provision to the effect that such consent, with the restrictions, when accepted, shall constitute a contract.

Such a contract neither party can violate without the consent of the other. Should the company apply to the Utility Board to have the rate of fare increased, it would undoubtedly be met with its contract. The case of *Borough of North Wildwood vs. Board of Public Utility Commissioners*, 95 Atl. Rep. 749, is not to the contrary. There the commission had authorized a higher rate than had been previously prescribed, and the only question was as to its power so to do against the objection of the municipality. The opinion says:

"While the municipality itself has not assented to a change in rate, the State, its creator and parent, has done so through a specially constituted agency. *If the water company were here complaining that its contract rights were being impaired, a different question would be presented; but the contract right of one of the State's creatures may be waived by the creator.*"

The effect then to this ordinance, with its acceptance and action thereunder by the trolley company, being to constitute a contract between the company and the municipality, it is incompetent for the Board of Public Utility Commissioners, just as it is incompetent for the municipality itself, to violate that contract by imposing upon the company an additional burden, the effect of which is to require it to carry passengers, for the same fare, not to, but beyond Cookman Avenue.

But it is contended that the ordinance does not in fact entitle the company to charge a five cent fare. We see no merit in this contention.

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The great weight of authority is that an ordinance which provides, as does the one in question, that "no more than five cents shall be charged" gives the company a contract right to charge a five cent rate, which rate cannot be reduced without the consent of the company.

In *Cleveland vs. Cleveland City Railway Co.*, 194 U. S. 517, the street railway company had similar rights under ordinances, one of which provided that the company "*should not charge more than five cents fare*" each way for one passenger over the whole or any part of its line. The City of Cleveland undertook to reduce the fare. The Supreme Court of the United States, after showing that the Legislature of Ohio lodged in the municipal council of Cleveland power to contract with the street railway companies with respect to the terms and conditions upon which such roads might be constructed and operated, held that such ordinances when accepted become contracts between the company and the municipality, which the municipality was powerless to abrogate, and that the new ordinance seeking to reduce the fares impaired the contract. That Court had already held in *Detroit vs. Detroit Citizens' Street Ry. Co.*, 184 U. S. 368, that the language of an ordinance which provides that the rate of fare for one passenger "*shall not be more than five cents*," does not reserve or give to the City any right to reduce such fare below the rate of five cents established by the company. To the same effect is *Cleveland vs. Cleveland Electric Ry. Co.*, 201 U. S. 529 and also *Minneapolis vs. Minneapolis Street Ry. Co.*, 215 U. S. 417.

It remains, then, to consider whether or not the restriction is a lawful one, and it has been suggested that inasmuch as it undertakes to apply to passage beyond the corporate limits of the Borough, it is *ultra vires* the municipality. We think, however, there is no merit in this suggestion.

The prosecutor was a trolley company, chartered, and proposing to run a line from Asbury Park to Belmar. It applied to Bradley Beach, an intermediate municipality, for permission to locate its tracks through that borough. That municipality was authorized to impose lawful restrictions in the interest of the public. The other municipalities involved, by ordinances locating the tracks of the line in question through their respective territories, imposed similar restrictions, so that the territory between Belmar and Asbury Park constituted one fare zone. We think that the municipality of Bradley Beach might legitimately conclude, as it did, that the "public interest" justified it in exacting, as a condition of the privilege to the company to operate within its corporate limits, that a stated fare be exacted over a given territory, notwithstanding such territory is partly outside its corporate limits. It is unnecessary for the borough in upholding its exactions to operate beyond its boundaries. It simply requires the trolley company, as condition of its contract, to make a certain agreement with reference to

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its fare. In *Reed vs. Inhabitants of Trenton*, 80 N. J. Eq. 503 *supra*, the ordinance of the City of Trenton under review expressly provided that:

"The rate of fare within the present limits of the City of Trenton for each passenger shall be three cents, and outside of the city limits, within a radius of five miles, five cents. * * *."

It was not intimated either by the Chancellor or by the Court of Errors and Appeals that the five cent provision applying outside of the city limits was for that reason illegal. On the contrary the Chancellor said that "the power of the City to impose the terms and conditions in the ordinance contained is undoubted," and the Court of Errors and Appeals seem to have regarded the acceptance of an ordinance with such a condition as a contract binding both the city and the accepting company. What the court decided was that the company in procuring the franchise with that provision from the City of Trenton did not and could not bind other companies. It was not intimated or suggested that if the lines of the applicant itself had extended beyond the limits it would not have been bound by the rate.

In *Rice vs. Detroit, etc., Ry.*, 122 Mich. 677; 81 Northwestern 927, the franchise granted by the township of Dearborn was under consideration. The franchise provided for the sale of trip tickets on cars of the company at a reduced rate between a village in the township and a city outside the township. Montgomery, C. J., said at page 928:

"We have, then, a case in which defendant is operating under a franchise imposing a duty to sell five tickets for 50 cents, good between the city hall, Detroit, and any point in the village of Dearborn. * * * It is contended that the franchise is in force only within the territorial limits of the township and does not cover territory in other townships. We do not think this contention can be sustained. The franchise is in the nature of a contract, and imposes obligations upon the company which those having occasion to ride from Dearborn to Detroit have a right to enforce. * * * The defendant saw fit to contract with the village of Dearborn for a rate outside the limits of the village, and to agree that tickets should be sold on its cars. This contract it cannot repudiate."

A somewhat analagous situation is dealt with in *Camden and Amboy Railroad Co. vs. Briggs*, 2 Zab. 623, where a charter of a railroad company restricting rates to be charged by a railroad company beyond the limits of the State was sustained. The reasoning of this case, as well as of *Raritan & Delaware Bay R. R. Co. vs. The Delaware & Raritan Canal Co.*, 3 C. E. Gr. 546 is applicable. It is common knowledge that municipalities frequently make exactions of this character, and they are not to be vitiated for that reason.

The order under review will be set aside.

Board of Education, Wharton, vs. Robert F. Oram.

An appeal from the decision of the Supreme Court has been made to the Court of Errors and Appeals. At the time of printing the matter is before the Court.

No. 332.

BOARD OF EDUCATION, BOROUGH OF WHARTON,

VS.

ROBERT F. ORAM.

Robert F. Oram, being the owner of a number of properties in the Borough of Wharton, installed a water plant to supply his residence and later extended the system to supply water to others, the Borough granting him permission to use the streets.

The Board of Education complains of an increased charge. The Board finds that a schedule of rates proposed by the respondent is not just and reasonable but suggests filing a schedule in accordance with the conclusions expressed in its report.

The Board recommends that Robert F. Oram associate with himself the proper number of persons and form a water company.

W. W. Cutler, for the Board of Education.

Elmer King, for the respondent.

Under date of June 17, 1915, the Board of Education of the Borough of Wharton filed a complaint against the rates charged by Robert F. Oram for water.

The petition recites that prior to June 22, 1903, Robert F. Oram, of the Borough of Wharton, was the owner of a certain water plant near the said Borough and from which he supplied the residents with water. It is further stated that said Robert F. Oram was desirous of extending pipes from his water plant through certain streets, roads and

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highways of the said Borough for the purpose of selling water to the inhabitants of the said Borough.

The petition further recites that the Mayor and Council of the said Borough adopted a resolution under date of June 22, 1903, granting said Robert F. Oram permission to open up certain streets and to lay water pipes therein, and that on the same day the Borough entered into a written contract with said Robert F. Oram, by which the Borough granted "permission to open certain of the public streets of the said Borough, and to lay down and maintain therein water pipes or water mains for the purpose of conveying and supplying water for domestic use by such persons as may contract for the use thereof with the said Robert F. Oram, and for the supply of certain fire hydrants hereinafter specified." That afterwards the said Borough adopted an ordinance, on October 19, 1903, entitled "An ordinance concerning laying of water mains and pipe in certain streets in the Borough under certain considerations and conditions and with certain restrictions; and regulating the method of making service connections with such mains." By this ordinance the streets and highways were designated in which said Robert F. Oram was to lay and maintain water pipes and the manner in which such pipes were to be laid, and the number of fire hydrants he should place and maintain.

The complaint further states that said Robert F. Oram did open up the streets designated in said agreement, and laid the water mains provided for therein, and began the supply of water to the public generally. The complaint further states that the Borough has no other supply and is dependent upon said Robert F. Oram for its water supply, the public school building being so supplied. The complaint goes on to state that the water used by the school had been

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charged for, for many years, at the rate of 30 cents per thousand gallons.

January 1915, said Robert F. Oram published on his water bills the following:

Quarterly Water Rates.

Flat Rates, one family, one faucet	\$2.00
Ordinary purposes	2.00
With all improvements	3.00
Meter Rate, 1,000 gallons .....	.30

and it is stated that the above schedule "had been printed on the bills for a long time."

The Board of Education received a bill for water used from October, 1914, to January, 1915, of 87,030 gallons at 30 cents, \$26.11, this bill being paid on January 29, 1915. The complaint further states "that without any warning or notice, on April 5, 1915, it received a bill from said Robert F. Oram for 71,120 gallons of water furnished it at 50 cents per thousand gallons, \$35.56." The complainant alleges that the rate of 50 cents per thousand gallons is excessive, and protests against the payment of the bill.

The answer of Mr. Oram to the complaint is a general admission of all of the allegations of the complainant, excepting the allegation to the effect that the rate was excessive. The answer recites the cost of the plant from 1899 to 1903, and the additional cost since that date. The answer contains a statement of revenues received during that time, and a claim that there has been a deficit. It further states that Mr. Oram had been a resident of Wharton practically all his life, and that in 1899, being the owner of certain land which contained large springs and being without water at his own home, he installed hydraulic rams, by means of which water was pumped to a tank located on an elevation back of his house. An agitation was then begun to have

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the water brought down in the village for domestic use and fire purposes, as the Borough was without any fire protection. Mr. Oram at that time spent about \$6,000 in enlarging the pumping plant and extending the mains and establishing fire hydrants. This latter construction is the work referred to as having been done in 1903.

It appears that the greater portion of the Borough of Wharton and the neighboring territory is more or less underlaid with iron ore, and that mining operations have drained a large part of the territory so that wells cannot be depended upon for water supply. This explains the necessity on the part of Mr. Oram for the development which he undertook in 1899, and later enlarged in 1903.

The first hearing in this matter was held on July 7, 1915, at which representatives of the Board of Education and of Mr. Oram were present. At this hearing it developed that the Borough ought to have representation, and that there should be a complete investigation of the value of the property and of the earnings and expenses involved in furnishing the service. Hearing was therefore continued to September 29th, to allow this investigation to be made.

On September 29th, Harry E. Carver, for the Commission, testified to an inventory and appraisal which had been made during the summer of 1915, and Nathaniel Sofman testified to the results obtained from an exhaustive examination of the books and records kept by Robert F. Oram.

The testimony concerning the value of the property showed that the cost to reproduce new the property used and useful in connection with the water service in the Borough of Wharton was \$20,127. The accrued depreciation amounted to \$1,805, leaving a present value of physical property of \$18,322. In addition to the above, property valued at \$661 had already been abandoned, and is not included in any of the figures given above. In the figures

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given, no allowance is made for the cost of obtaining any franchises or any other item whatsoever than the actual physical property in use.

Testimony submitted by Mr. Sofman based on examination of the books and records of Mr. Oram was given in detail for the years from 1903 to 1914 inclusive. It appears that water has been furnished to certain houses owned by Mr. Oram without charging for the same, but in the income statement testified to by Mr. Sofman it has been assumed that charges for water were paid by all of those receiving water service. From the testimony of Mr. Carver, it is found that the investment in physical property, not including certain rights of way and real estate, was \$17,488, and in the statement compiled by Mr. Sofman an allowance for depreciation has been made of \$159 per annum and an allowance for a net return on the investment of 6%. This net return is computed on the investment of \$17,488, and does not take into account any allowance for rights of way required in the operation of this water system. The statement referred to shows that in the period from 1903 to 1914 inclusive the net deficit on the entire operation amounts to \$5,520. In order to find the base upon which Mr. Oram should now compute his rates, this accumulated deficit has been added to the present value of physical property, which gives us a total of \$23,842.

After testimony by Robert F. Oram with regard to the conditions under which the plant was constructed and operated, the hearing was continued to October 27, 1915, on which date were present John R. Spargo, Mayor of the Borough of Wharton, W. W. Cutler, representing the Board of Education, and Elmer King, representing Robert F. Oram.

From the testimony in this case, the following appears:

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1st. Robert F. Oram, being the owner of a number of properties in the Borough of Wharton, installed a water plant in 1899, to furnish water for his own residence.

2nd. That in 1902 a request was made by a number of property owners, Henry W. Kice and others, for the extension of the line "down town." An agreement providing for this was made May 20, 1903, between Mr. Oram and the applicants referred to, and in order to effectuate this, the Borough, under date of June 22, 1903, passed a resolution granting permission for the opening of the streets.

3rd. That the plant referred to was constructed and that water has been furnished to property owners and residents, in some cases at flat rates and in other cases at meter rates.

4th. It appears further that the private parties for whose benefit the extension was made agreed to pay and did pay for fire protection service in proportion to the "assessment made for levying taxes in said Borough on the real estate owned by said parties of the second part." The fire protection afforded included seven hydrants at \$30 per year each, total of \$210. This contract was dated May 20, 1903, and was to run until the sale of said mains, hydrants, etc., to the Borough of Wharton or "the granting of a water franchise by the Borough of Wharton," upon which event the agreement should "be null and void as to all future assessments and rents."

5th. June 22, 1903, the Council of the Borough of Wharton passed a resolution permitting the opening of certain streets in the Borough of Wharton for the purpose of laying certain water mains; this right and privilege was granted "upon the express condition that said Robert F. Oram, his heirs, executors, administrators, or assigns, shall set up or maintain six fire hydrants, to be connected with said water mains and located within the exterior lines of said streets when so set up shall be maintained and sup-

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plied with water by said Robert F. Oram, his heirs, executors, administrators, or assigns, wholly at his or their own private expense and without any charge, cost or rentals therefor, whatever to be paid for the public use thereof for fire purposes upon the further condition that said Robert F. Oram will, at any time after five years from this date, sell to the Borough the water pipes or mains and fire hydrants laid and set up under the permission hereby granted, at the cost price thereof." This was followed by an ordinance dated October 19, 1903, and seven hydrants were put in at points selected by the Council. The Borough never paid any hydrant rental. The first few years private parties who had joined with Mr. Henry W. Kice in the agreement to pay hydrant service made their payments, and then gradually dropped out, some of them moving away, until not more than 50 per cent. of the original signatories pay at the present time. Those who have failed to pay their share of the fire protection charge have been regularly billed, but no action has been taken to force payment. Counsel for Mr. Oram claims that those who have failed to pay discovered that the franchise with the town required the respondent to furnish water to the hydrants without charge.

6th. This matter, in the first instance, came before the Board on complaint of the Board of Education, but at the suggestion of the Board and in order to make the issue clear, Mr. Oram filed, under date of October 15th, a petition, asking that the Board inquire into this matter in complete detail, and fix just and reasonable meter or flat rates.

The schedule reads as follows:

On meter 50¢ for 1,000 gallons.

Without meter, single tap, \$6.00.

For hot and cold water faucets, bathroom and laundry, if desired, \$12 a year.

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CONCLUSIONS.

From the testimony with regard to the investment in this property, and the testimony referring to earnings and expenses, it is clear that under all the existing circumstances, the total revenues obtained by Mr. Oram have been insufficient to provide a sufficient net return upon the investment in physical property. Increased earnings might be obtained from an increase in rates, but testimony also shows that there are not, at the present time, attached to the mains of this company all of the properties which could be reasonably served by this system if certain extensions were made. An extension southward on First Street would make it possible to serve a large number of houses already in place. Other short extensions in the territory south of Canal Street, and eastward of Second would also bring in additional revenue. Hydrants ought to be installed at distances not greater than 500 feet apart, in order that fire protection service may be extended to all of the inhabitants of the built up portions of the Borough. An extension southward on First Street should result in increase in revenue considerably in excess of the corresponding increase in cost. An extension northward on First Street ought also to be made, in the opinion of the Borough authorities, but the number of residences in the northern portion of the Borough is so limited that the cost of service would probably exceed the increase in revenues obtained from the extension to the northward.

A rate of 50 cents per thousand gallons is charged in one or two localities in the State, where only a few houses are served under unusual circumstances, but is higher than the rate generally charged in municipalities of this State. The minimum annual charge where a meter is installed, if placed at \$10, would be reasonable. A rate of 40 cents per

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thousand gallons for water of the character furnished in the Borough of Wharton would also be reasonable. A charge of \$6.00 for a single faucet, where one family is supplied, appears to be reasonable, but for each additional family occupying premises supplied through a single faucet, \$4.00 additional per annum is a sufficient and reasonable charge. Where a residence is completely equipped with hot and cold water, toilet facilities, bath tub, and laundry tubs, a charge of \$18 per year is more nearly commensurate with the value of the service.

With regard to the charges for fire protection, the sum of \$210 which the company now claims as the proper charge for seven hydrants is not unreasonable, as the resultant benefit through reduction of insurance rates far exceeds this sum. If mains are extended so as to provide proper fire protection for the balance of the built up portion of the Borough, the service ought to be paid for at the same proportionate rate. If the private householders who are benefitted by the fire protection service will continue to pay for this service, they are at perfect liberty to do so, but the water company cannot be required to furnish this service to the Borough free of charge. In the opinion of the Board, it was the evident intention of the Borough Council, in 1903, to take advantage of the private agreement between Robert F. Oram on the one hand, and Henry W. Kice on the other, which provided that the fire protection service was to be paid for by the private individuals. Protection against fire is properly the duty which falls upon the organized municipality, and the cost of such service is an item which may be properly included with other items making up the tax budget. It is so done in all municipally operated plants.

Under all the circumstances, the Board concludes that the proposed schedule of rates is not just and reasonable, and ought not to be put into effect. A schedule in accord-

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ance with the conclusions herein stated may be filed. The Board calls attention to the existing situation with regard to the right of Robert F. Oram to carry on the business of a water company. Either one of two things ought to be done.

First, either Robert F. Oram ought to be given permission to form a water company, and this permission ought to be exercised, following which the newly organized company ought to proceed to extend its mains to cover the built-up portions of the Borough, or

Second, the Borough ought to take steps to take over the existing mains and water system now operated by Robert F. Oram, and the Borough should then itself make the necessary extensions to cover the balance of the Borough. In order to bring the matter up for proper action by the local authorities, the Board RECOMMENDS that Robert F. Oram associate with himself the proper number of persons, and make application to the Borough for permission to form a water company. This permission might be granted on condition that the new company agree to sell its property to the Borough at an appraised value, and at any time when the Borough shall take action looking thereto. After the incorporation of the company, application may be made by the company to the Borough for a proper franchise. If the Borough does not immediately contemplate the purchase of the existing water mains and the construction of a water system of its own, the situation can be best cured by allowing Mr. Oram to form a water company, grant to him a suitable franchise, retaining on the part of the Borough the right to take over the property at any time at an appraised value.

Dated February 29th, 1916.

Grade Crossings—Elizabeth—C. R. R. of N. J.

No. 333.

IN RE PROCEEDINGS UNDER CHAPTER 57, P. L. 1913, RELATING TO CERTAIN PUBLIC HIGHWAYS IN THE CITY OF ELIZABETH WHICH CROSS AND ARE CROSSED BY THE RAILROAD OPERATED BY THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, AT THE SAME LEVEL.

AMENDED ORDER.

It appears to the Board of Public Utility Commissioners that the following named streets and avenues, in the City of Elizabeth are or may be claimed to be public highways, to wit:

CROSSING MAIN LINE OF RAILROAD OPERATED BY CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Schiller Street.

A lane between Spring and Reid Streets, located in Block 401 of the "Martin Act Map" of the City of Elizabeth.

A lane leading to Cat Tail Swamp, located in Block 400 and extending through Blocks 399, 398, 380 and 381 of said "Martin Act Map."

Henry Street, located in Block 399 of said "Martin Act Map."

Unnamed Street, shown on "Map of Building Lots belonging to William M. Weeks and others situated in the Township of Elizabeth, Essex County, New Jersey," filed August 31, 1854, in Case 153 in office of Register of Deeds of Essex County.

Court Street, located between Reid and Division Streets.

Old Smith Street, located in Block 380, of said "Martin Act Map."

Grade Crossings—Elizabeth—C. R. R. of N. J.

Unnamed Street, called Center Street south of railroad, shown on "Map of Property lying on the Somerville Railroad between Elizabethport and Elizabethtown, in the County of Essex and State of New Jersey" August 15, 1837, filed in Case 152 in the Register's office of Essex County.

Division Street, shown on the map last mentioned.

Mechanic Street, shown on the map last mentioned.

Court Street, shown on "Map of Wetmore's Addition to Elizabethport, New Jersey," filed November 30, 1853, in County Clerk's Office, Essex County.

South Park Street, located between Court Street and Broadway (also sometimes called Mechanic Street) shown on said Map of Wetmore's Addition.

Magnolia Avenue, shown on said Map of Wetmore's Addition as Wall Street.

Eighth Street, shown on said map of Wetmore's Addition.

Bond Street, shown on said map of Wetmore's Addition.

Pine Street, shown on said map of Wetmore's Addition.

Seventh Street, as shown on Commissioner's Map of City of Elizabeth, March, 1869.

Seventh Street, as shown on said map of Wetmore's Addition.

Port Avenue, shown on said map of Wetmore's Addition.

Irving Street, shown on "Map of Building Lots in the City of Elizabeth, N. J., belonging to C. O. Halsted," filed September 26, 1860.

Lincoln Street, shown on said C. O. Halsted Map.

Sixth Street, as shown on said Commissioner's Map.

Sixth Street, as shown on said map of Wetmore's Addition.

Spruce Street, shown on said map of Wetmore's Addition.

Drift Road, leading to One Tree Island located in Blocks 276 and 277 of said "Martin Act Map" and shown on Meyer's Revolutionary Map.

Grade Crossings—Elizabeth—C. R. R. of N. J.

Walnut Street, shown on said map of Wetmore's Addition.

Fifth Street, as shown on said Commissioner's Map.

Fifth Street, as shown on said map of Wetmore's Addition.

Beach Street, shown on said map of Wetmore's Addition.

Fourth Street, as shown on said Commissioner's Map.

Fourth Street, as shown on said map of Wetmore's Addition.

Chestnut Street, shown on said Map of Wetmore's Addition.

Ash Street, shown on said map of Wetmore's Addition.

Third Street, as shown on said Commissioner's Map.

Third Street, as shown on said map of Wetmore's Addition.

Second Street, shown on "Map of the Trumbull Property at Elizabethport, New Jersey," filed in Union County Clerk's Office, January 9, 1871, No. 61.

First Street, shown on said Trumbull Map.

York Street, as shown on said Commissioner's Map.

New Point Road.

CROSSING NEWARK AND ELIZABETH BRANCH OF RAILROAD OPERATED BY CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Schiller Street.

Beach Street, shown on said Map of Wetmore's Addition.

Fourth Street, as shown on said Commissioner's Map.

Fourth Street, as shown on said Map of Wetmore's Addition.

Chestnut Street, shown on said Map of Wetmore's Addition.

York Street, as shown on said Commissioner's Map.

Ash Street, shown on said Map of Wetmore's Addition.

Bond Street, shown on said Commissioner's Map.

Grade Crossings—Elizabeth—C. R. R. of N. J.

- Elm Street, shown on said Map of Wetmore's Addition.
- Anna Street, shown on said Commissioner's Map.
- Olive Street, shown on said Map of Wetmore's Addition.
- Flora Street, shown on said Commissioner's Map.
- Birch Street, shown on said Map of Wetmore's Addition.
- Emma Street, shown on said Commissioner's Map.
- Olive Street, shown on said Commissioner's Map.
- Laura Street, shown on said Commissioner's Map.
- Julia Street, shown on said Commissioner's Map.
- Augusta Street, shown on said Commissioner's Map.
- Fairmount Avenue, shown on said Commissioner's Map.
- Unnamed Street, between Fairmount Avenue and Louisa Street, shown on said Commissioner's Map.
- Louisa Street, shown on said Commissioner's Map.
- Two (2) Unnamed Streets, between Louisa Street and North Avenue, shown on said Commissioner's Map.
- North Avenue, shown on said Commissioner's Map.
- Unnamed Street, between North Avenue and Fanny Street, shown on said Commissioner's Map.
- Fanny Street, shown on said Commissioner's Map.
- Unnamed Street (sometimes called Henrietta Street) next north of Fanny Street, shown on said Commissioner's Map.
- Unnamed Street, (sometimes called Charlotte Street) next south of Alina Street, shown on said Commissioner's Map.
- Alina Street, shown on said Commissioner's Map.
- Unnamed Street, (sometimes called Bertha Street) next north of Alina Street, shown on said Commissioner's Map.
- Unnamed Street, (sometimes called Amelia Street) next south of Virginia Street, shown on said Commissioner's Map.
- Virginia Street, shown on said Commissioner's Map.

Grade Crossings—Elizabeth—C. R. R. of N. J.

Unnamed Street, next north of Virginia Street, shown on said Commissioner's Map.

CROSSING ELIZABETHPORT AND PERTH AMBOY BRANCH OF RAILROAD OPERATED BY CENTRAL RAILROAD COMPANY OF
NEW JERSEY.

Trumbull Street.

New Point Road.

Port Avenue.

Pine Street.

Bond Street.

Magnolia Avenue.

Court Street.

Broadway.

Livingston Street.

East Jersey Street.

Fulton Street.

Franklin Street.

Marshall Street.

Elizabeth Avenue.

First Avenue.

Anna Street, shown on said Commissioner's Map.

Bond Street, shown on said Commissioner's Map.

York Street, shown on said Commissioner's Map.

Elm Street, shown on said Map of Wetmore's Addition.

Ash Street, shown on said Map of Wetmore's Addition.

Third Street, as shown on said Map of Wetmore's Addition.

Third Street, as shown on said Commissioner's Map.

Chestnut Street, shown on said Map of Wetmore's addition.

Beach Street, shown on said Map of Wetmore's Addition.

New Point Road, shown on said Map of Wetmore's Addition.

Grade Crossings—Elizabeth—C. R. R. of N. J.

Walnut Street, shown on said Map of Wetmore's Addition.

Spruce Street, shown on said Map of Wetmore's Addition.

Fourth Street, as shown on said Commissioner's Map.

Fourth Street, as shown on said Map of Wetmore's Addition.

Cedar Street, located about where Port Avenue is now, shown on "Map of the New Manufacturing Town of Elizabethport, N. J." 1835.

Wall Street, (now called Magnolia Avenue), shown on said "Map of the New Manufacturing Town of Elizabethport, N. J." 1835.

Washington Street, (now called Livingston Street) shown on said "Map of the New Manufacturing Town of Elizabethport, N. J." 1835.

Clinton Street, (now called East Jersey Street) shown on said "Map of the New Manufacturing Town of Elizabethport, N. J." 1835.

Point Road, (now called First Avenue) shown on said "Map of the New Manufacturing Town of Elizabethport, N. J." 1835.

CROSSING BROADWAY BRANCH OF RAILROAD OPERATED BY CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Fourth Street.

Fifth Street.

New Point Road.

Seventh Street.

Division Street.

East Grand Street.

A lane leading to Cat Tail Swamp, located in Block 400 and extending through Blocks 399, 398, 380 and 381 of said "Martin Act Map."

Grade Crossings—Elizabeth—C. R. R. of N. J.

Henry Street, located in Block 399, of said "Martin Act Map."

Unnamed Street, shown on "Map of Building Lots belonging to William M. Weeks, and others, situated in the Township of Elizabeth, Essex County, New Jersey," filed August 31, 1854, in Case 153 in office of Register of Deeds of Essex County.

A street 60 feet wide, a continuation of Jacques Street, north of East Grand Street.

Jacques Street.

Smith Street, shown on "Map of the Estate of Isaac Jacques, deceased, in the City of Elizabeth, N. J., Ernest L. Meyer, City Surveyor, 1882."

Mechanic Street, (substantially the street now known as East Grand Street, shown on "Map of Real Estate of Stephen P. Brittan, dec'd., Elizabethtown, N. J." filed in Essex County, August 21, 1854, and marked 55F.

Port Street, shown on said Jacques Map.

Division Street, as variously shown on said Halsted Map, Map of Wetmore's Addition, Weeks' Map and Map of Property lying on Somerville Railroad.

Division Street, located between Blocks 360 and 361 of said "Martin Act Map."

Center Street, shown on said map of property lying on Somerville Railroad.

Eighth Street, shown on said Map of Wetmore's Addition.

Driftway to salt meadow west of Sixth Street.

Sixth Street.

It further appears that said before named streets and avenues and the railroad operated by the Central Railroad Company of New Jersey, cross or may be claimed to cross each other at the same level.

Grade Crossings—Elizabeth—C. R. R. of N. J.

The Board of Public Utility Commissioners, therefore, by virtue of the powers conferred upon it by statute hereby initiates a proceeding and calls a hearing to determine whether said streets and avenues, or any of them, are public highways and whether such of them as are public highways and the said railroad cross each other at the same level and whether said crossings, or any of them, are dangerous to public safety or whether the public travel on such highways, or any of them, is impeded by such crossings and to determine what, if any, order shall be issued by said Board for the alteration of said crossings, or any of them, by substituting therefor a crossing or crossings not at the grade of such public highways, or any of them, under or over such railroad or by reconstructing such railroad under or over such public highways, or any of them, or by vacating, relocating or changing the lines, width, direction or location of such highways, or any of them, and the opening of a new highway in the place of the one ordered vacated, and to determine any and all other matters, the determination of which may be within the power of said Board and which may be involved in and incidental to the separation of the grades of said highways, or any of them, and of said railroad.

It further appears that an order issued by the Board in this proceeding for the separation of the grades of said highways and of said railroad may affect the following-named streets and avenues in said City of Elizabeth, which are or may be claimed to be the public highways, to wit:

IN THE VICINITY OF THE MAIN LINE OF THE RAILROAD OPERATED
BY THE CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Catherine Street.

Oak Street.

Spring Street.

Grade Crossings—Elizabeth—C. R. R. of N. J.

Reid Street.

Division Street.

Somerville Railroad Avenue, (also sometimes called Railroad Street), shown on said Weeks' Map, running from Spring Street easterly across and beyond Reid Street.

Magnolia Avenue, running parallel with railroad, west of Division Street.

Trumbull Street, running parallel with the railroad east of Division Street.

East Grand Street.

IN THE VICINITY OF THE ELIZABETHPORT AND PERTH AMBOY
BRANCH OF THE RAILROAD OPERATED BY SAID COMPANY.

Spruce Street.

South Park Street.

Port Avenue.

Broadway.

IN THE VICINITY OF BROADWAY BRANCH OF THE RAILROAD OPER-
ATED BY SAID COMPANY.

Broadway.

Somerville Railroad Avenue.

Miller Street.

Unnamed Street, located in Block 360, of said "Martin Act Map."

Jersey Street, located in Block 327, of said "Martin Act Map."

'And the said Board of Public Utility Commissioners HEREBY FIXES Wednesday, the twenty-ninth day of March, one thousand nine hundred and sixteen, at the hour of eleven o'clock in the forenoon as the time, and the Court House in Jersey City, New Jersey, as the place of the hearing hereby called.

Grade Crossing—East Clinton Avenue, Hamilton Township—P. R. R.

And the said Board hereby directs its Secretary within ten days from the date of entry hereof, to give notice to the City of Elizabeth and the corporations, co-partnerships and individuals interested in the hearing hereby called, by sending to the said City of Elizabeth, the Central Railroad Company of New Jersey, the Public Service Railway Company, the Public Service Electric Company, the New York Telephone Company, the Interstate Telephone and Telegraph Company, the Elizabethtown Water Company, the Elizabethtown Gas Light Company, the Elizabeth, Plainfield and Central Jersey Railway Company, and the Western Union Telegraph Company, certified copies of this order, and publishing in The Elizabeth Evening Times and The Elizabeth Daily Journal, newspapers circulating in the City of Elizabeth, for two consecutive issues, at least one week prior to the date of the hearing hereby called, the notice provided for by Chapter 238, P. L. 1914.

And the Board hereby determines that such mailing and publication shall constitute reasonable notice of the proceeding hereby initiated and the hearing hereby called.

Dated March 7th, 1916.

No. 334.

IN THE MATTER OF PROCEEDINGS UNDER CHAPTER 57, P. L. 1913, RELATING TO THE CROSSING OF THE HIGHWAY KNOWN AS EAST CLINTON AVENUE AND THE TRACKS OF THE PENNSYLVANIA RAILROAD COMPANY AT THE SAME LEVEL IN THE TOWNSHIP OF HAMILTON, MERCER COUNTY.

AMENDED ORDER.

The Board of Public Utility Commissioners, on its own motion, by virtue of the powers conferred upon it by "A

Grade Crossing—East Clinton Avenue, Hamilton Township—P. R. R.

Supplement to an act entitled 'An act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers,' approved April 21st, 1911," which supplement was approved March 12th, 1913, and which constitutes Chapter 57 of the Laws of 1913, did, on the sixteenth day of December, nineteen hundred and fifteen, adopt an order initiating a proceeding and calling a hearing to determine whether the crossing of East Clinton Avenue in the Township of Hamilton, in the County of Mercer, and the railroad of the Pennsylvania Railroad, is dangerous to public travel or whether public travel on such highway is impeded thereby, and to determine what, if any, order should be issued by said Board for the alteration of said crossing, by substituting therefor a crossing not at the grade of such public highway, either by carrying such highway under or over such railroad, or by reconstructing such railroad under or over such public highway, or by vacating, relocating or changing the line, width, direction or location of such highway and the opening of a new highway in the place of the one ordered vacated, and to determine any and all other matters which may be involved and the determination of which may be within the power of such Board in the separation of the grade of such highway and of said railroad.

The Board gave the notice required by law to the parties in interest of the hearing to be held by it, and such hearing having been held, and it appearing to the Board that the crossing of East Clinton Avenue in the Township of Hamilton, in the County of Mercer, and the railroad of the Pennsylvania Railroad is dangerous to public safety and that the public travel on such highway is impeded thereby, and that the Pennsylvania Railroad Company is operating said railroad and that said crossing should be

Grade Crossing—East Clinton Avenue, Hamilton Township—P. R. R.

altered according to a plan approved by this Board and such plan having been prepared,

Now, THEREFORE, it is on this fourteenth day of March, one thousand nine hundred and sixteen, ORDERED, and the said Board of Public Utility Commissioners, by virtue of the powers and authority vested in it by the aforesaid act of the Legislature of this State, DOES HEREBY ORDER the Pennsylvania Railroad Company to alter such crossing according to the plan annexed to and made part of this order and marked "Location Plan of Proposed East Clinton Avenue Undergrade Bridge on Line of New York Division P. R. R. Hamilton Township, Mercer Co., New Jersey Scale 1"=100' Engineering Department P. R. R. Philadelphia, Pa., June 26th, 1914. Revised February 16th, 1916," which said plan is hereby approved by said Board and by reference thereto herein made part hereof by substituting therefor a crossing not at the grade of such public highway by carrying such public highway under the said railroad according to and as shown on said plan for said purpose.

Any telegraph, telephone, gas, electric lighting, power, water, oil, pipe line, or other company, corporation, co-partnership or individual whose property or construction it may be necessary to change or remove to carry said plan and this order into effect, shall remove and change the same according to said plan.

And it is FURTHER ORDERED that the said Pennsylvania Railroad Company, United New Jersey Railroad and Canal Company, Board of Commissioners of the City of Trenton, Board of Chosen Freeholders of the County of Mercer, the said Township of Hamilton and the Township Committee thereof and their successors in office, the Public Service Gas Company, Public Service Electric Company and the Western Union Telegraph Company and all other parties

Erie R. R.—In re bonds.

to this proceeding, and each and every of them, proceed with due diligence to the execution of this order and comply with all the requirements thereof and the duties imposed upon them hereby and by the said Act under which this order is made, and the laws of this State, and to that end they and each of them exercise in good faith all of the powers conferred upon them and each or any of them by the laws of this State.

And it is **FURTHER ORDERED** that the said Pennsylvania Railroad Company begin the actual work required in the performance and execution of this order on or before May 1st, 1916, and perform and fully comply with the directions and requirements of this order and complete all of the work required thereunder to be done within eight months from the date of this order.

This amended order shall take effect April 5th, 1916.

Dated March 14th, 1916.

No. 335.

IN THE MATTER OF THE APPLICATION OF THE ERIE RAILROAD COMPANY FOR APPROVAL OF ISSUE OF BONDS UNDER ITS GENERAL MORTGAGE DATED APRIL 1ST, 1903.

ORDER.

Erie Railroad Company, a corporation of the State of New York, having on February 28th, 1916, filed its petition with this Board (which petition is by reference thereto herein made part hereof) praying for an order, approving the issue of \$10,000,000 of Series "C" bonds heretofore issued (to be modified and known as Series "D" bonds), and the issuing of \$18,000,000 of Series "D" bonds under

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its general mortgage dated April 1st, 1903, and the execution of a supplemental indenture with the Guaranty Trust Company of New York, successor trustee under said General Mortgage of April 1st, 1903, making certain modifications and changes in said General Mortgage, and a hearing having been had before the Board, and the said Erie Railroad Company having appeared and the Board having taken proof of the facts set forth in the petition and having examined such witnesses and papers as it deemed necessary to enable it to reach a conclusion in the matter.

Now, THEREFORE, after due deliberation, this Board:

(1) HEREBY APPROVES the proposed supplemental indenture with the Guaranty Trust Company of New York, successor Trustee, under said General Mortgage of April 1st, 1903, making certain modifications and changes in said mortgage in connection with the changing of said Series "C" bonds and their redesignation as Series "D" bonds and in connection with the issue of additional Series "D" bonds, as hereinafter provided, a copy of which proposed supplemental indenture was filed in this proceeding as Exhibit J. That upon the execution and delivery of said proposed supplemental indenture hereby approved there shall be filed with this Board a copy of said supplemental indenture in the form in which it was executed and delivered, together with an affidavit by the president or other executive officer of the company stating that the supplemental indenture as so executed and delivered is the same as that herein approved by this Board.

(2) HEREBY APPROVES the change, redesignation and re-issue by the said Erie Railroad Company of the \$10,000,000 face value of Series "C" bonds heretofore issued in part under an order of the Board of Railroad Commissioners of the State of New York of February 18, 1903, and in part under an order of the Public Service Commission of the

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State of New York for the Second District, dated April 1, 1912, all of such bonds to be redesignated as Series "D" bonds, to be dated October 1, 1915, to be secured by said general mortgage dated April 1, 1903, and the aforesaid supplement thereto, said bonds or the proceeds thereof to be used for the reimbursement of the treasury of said Erie Railroad Company for moneys actually expended from income for proper capitalizable purposes as provided in said mortgage and as set forth in the said petition herein. Provided further that as to \$7,000,000 of said bonds, which are pledged as security for an issue of \$10,000,000 of five per cent collateral gold notes dated April 1, 1915, and payable April 1, 1916, that none of said bonds shall be sold or disposed of by said Erie Railroad Company while the said collateral gold notes, or any of them, are outstanding, except upon the express condition that the proceeds realized from the sale of said bonds shall be applied to the payment and discharge of said notes to the end that upon the sale of any of said \$7,000,000 of bonds that collateral gold notes shall be retired with the proceeds of said bonds so far as the same may be sufficient therefor.

(3) HEREBY APPROVES the issue by the Erie Railroad Company under its said General Mortgage dated April 1, 1903, and the supplement thereto, of \$18,000,000 face value of 4% bonds, which said bonds shall be designated as Series "D" bonds, and shall be dated October 1, 1915.

(4) HEREBY REQUIRES that \$19,627,130 face value of the bonds the issuance of which is approved by this order shall be sold and disposed of at not less than 85% of their face value so as to realize \$16,094,246.60 net to the corporation after payment of a commission of 3% of the face value of the bonds to the syndicate, which at the instance of the corporation has been formed to underwrite the sale of such bonds and that the remaining \$8,372,870

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of said bonds, the issuance of which is approved, by this order shall be sold or disposed of for not less than 85% of their face value so as to realize net proceeds of at least \$7,116,939.50.

(5) That the proceeds of said \$18,000,000 of bonds which are to be issued under said General Mortgage of April 1, 1903, and certified to the company by the Trustee for the uses and purposes as provided in said mortgage, shall be used and applied towards the following purposes and no others, to wit:

(a) The refunding of such part of the \$10,000,000 of 5% notes maturing April 1, 1916, as shall remain after the application of the proceeds of the \$7,000,000 of Series "C" bonds pledged as security thereunder, when changed and sold as hereinbefore provided.

Face value of notes	\$10,000,000	
Proceeds of \$7,000,000 bonds at 82%	5,740,000	\$ 4,260,000

(b) The reimbursement of the treasury of the company for moneys actually expended from income within five years prior to the filing of this application for capitalizable purposes to the amount and extent of the expenditures from the proceeds of the \$10,000,000 of 5% notes..... \$ 9,750,000

(c) The refunding of the \$13,280,000 of three year 5½% notes maturing April 1, 1917..... \$13,280,000

(6) HEREBY REQUIRES that none of the said Series "D" bonds herein authorized shall be hypothecated or pledged as collateral by the Erie Railroad Company unless any such pledge or hypothecation shall be expressly approved and authorized hereafter by this Board.

(7) HEREBY FURTHER REQUIRES that the Erie Railroad Company shall for each three months period ending March 31st, June 30th, September 30th and December 31st, file not more than fifteen days from the end of such period a verified report showing:

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(a) What securities have been sold, exchanged or otherwise disposed of during such period in accordance with the authority contained herein and the date of such sale or disposition.

(b) To whom such securities were sold.

(c) What proceeds were realized from such sale.

(d) Any other terms and conditions of such sale.

(e) The purposes to which the proceeds have been applied.

Such reports shall continue to be filed until all of said bonds shall have been sold or disposed of in accordance with the authority contained herein and if during any period no securities were sold or disposed of, the report shall set forth such fact.

(8) The authority contained in this order to issue securities is upon the express condition that the petitioner accepts and agrees to comply in good faith with the provisions hereof and before any securities are issued pursuant hereto and within thirty days of the service hereof, the said company shall file with this Board a satisfactory verified stipulation duly authorized by its Board of Directors accepting this order with all its terms and conditions, and such order shall be void and of no force or effect until such stipulation shall have been filed as required herein.

Dated March 14th, 1916.

In re Delaware and Atlantic Telegraph and Telephone Co. and Hackettstown Telephone and Telegraph Co., Rates, etc.

No 336.

IN THE MATTER OF THE APPLICATION OF THE DELAWARE AND ATLANTIC TELEGRAPH AND TELEPHONE COMPANY AND THE HACKETTSTOWN TELEPHONE AND TELEGRAPH COMPANY FOR APPROVAL OF THE SALE OF CERTAIN PROPERTY BY THE FORMER AND THE ISSUANCE OF CAPITAL STOCK OF THE LATTER IN PAYMENT FOR THE SAME AND FOR OTHER PURPOSES.

AND

IN THE MATTER OF PROPOSED INCREASE IN RATES OF THE HACKETTSTOWN TELEPHONE AND TELEGRAPH COMPANY.

Frankland Briggs, for The Delaware and Atlantic Telegraph and Telephone Company.

Charles W. Dedrick and *William Landerman*, for The Hackettstown Telephone and Telegraph Company.

Application is made for approval of the sale by The Delaware and Atlantic Telegraph and Telephone Company of certain property to The Hackettstown Telephone and Telegraph Company, and for permission to the Hackettstown Telephone and Telegraph Company to issue stock to pay for the same and to raise funds for other capital purposes.

For some years these two companies have operated in Hackettstown and vicinity. It is now proposed that The Delaware and Atlantic Telegraph and Telephone Company transfer its property in that territory to the Hackettstown Company, which will connect with the Delaware and Atlantic system, under the terms of an operating agreement.

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It appears from the testimony that the result will be favorable to the public, and that it is desirable that the proposed plan be carried out.

It further appears that the property to be transferred is reasonably worth \$9,000, the sum to be paid for it. In addition \$3,000 is necessary to make needed extensions.

The Board will, therefore, approve the sale of the property mentioned in the agreement between the parties, and will approve the issue of stock to the amount of \$12,000 for the purposes mentioned.

It appears that the issue of \$9,000 of stock to The Delaware and Atlantic Telegraph and Telephone Company will not result in a majority control, so that the stock may be issued to that Company.

The necessary Certificates will issue.

The Hackettstown Telephone and Telegraph Company filed new tariffs carrying substantial increases in rates, and asked that permission be granted to put them into effect.

On the record before us we conclude that approval should not be granted. The petition with respect to rates is dismissed.

Dated March 14th, 1916.

Application was made by the Hackettstown Telephone & Telegraph Company for re-hearing on the proposed increase in rates. The application was granted and after rehearing the following was ordered entered.

REPORT.

James Fisher, for the Company.

On March 14, 1916, the Board approved sale of the property of the Delaware and Atlantic Telegraph and Telephone Company to the Hackettstown Telephone and Telegraph Company and approved the proposed issue of the capital

In re Delaware and Atlantic Telegraph and Telephone Co. and Hackettstown Telephone and Telegraph Co., Rates, etc.

stock of the last mentioned company to the amount of \$12,000 for the capital purposes mentioned in the original petition.

It appeared from the testimony that the purchase would be favorable to the public and that it is desirable that the proposed application be carried out. At the hearing last mentioned, the Hackettstown Telephone and Telegraph Company asked that permission be granted to put into effect new tariffs which were the same as charged by the Delaware and Atlantic Company, but failed to furnish any convincing testimony for the necessity of such increase. The petitioner now asks for a rehearing on the question of rates and has submitted all its testimony bearing on the said subject the same as if the rehearing had been granted with the agreement that the testimony would be considered at the same time and with like effect.

From the testimony now submitted, it appears by proper audit that the amount of total expenses of the Hackettstown Telephone and Telegraph Company for twelve months preceding application, were \$3,925, and that its revenue for the same period was \$3,707; that the replacement value of the Delaware and Atlantic plant is \$10,122 and of the Hackettstown Company, \$13,917, representing a total investment of \$24,039. The total expenses of both plants under new operating conditions would be \$6,657 and the total revenues under the same proposition \$6,038, or a deficit of \$619. This is at the present rates charged. Under the new schedule for which approval is asked, the estimated revenue would be \$7,297 and the expenses under the same unified condition, \$6,673, leaving a profit of \$624.

The petitioner paid a dividend of 4% on its capital stock in the years 1910, 1911, 1912 and 1915, but has not charged off anything for depreciation of the plant which is now

**In re Delaware and Atlantic Telegraph and Telephone Co. and Hacketts-
town Telephone and Telegraph Co., Rates, etc.**

eight or nine years old. The telephone company advertised in the local newspapers its intended application for increased rates, and also posted notices thereof in numerous public places. There has been no objection to the increase; on the contrary a petition has been addressed to this Board certifying that the signers are subscribers to the Hacketts-town Telephone and Telegraph Company and the Delaware and Atlantic Telegraph and Telephone Company in Hackettstown and adjacent territory. This expresses the petitioner's belief that the consolidation of the telephone companies will be beneficial to the community as the present double service will thereby be eliminated and they will be getting an up-to-date, continuous service at the rates now charged by the Delaware and Atlantic Company. This petition bears the signatures of 247 customers of whom 215 have already signed contracts under the new rates. The total number of subscribers of both companies is 348 so that over seventy per cent. of them have subscribed to and approved the new rates.

The schedule now sought to be filed is the uniform charge made by the "Bell Companies" and from the evidence before us, we conclude that such increase is warranted and the schedule of new tariffs may be filed as submitted.

Dated October 10, 1916.

Grade Crossing—Whitehead's Road, Hamilton Township—P. R. R.

No. 337.

IN THE MATTER OF PROCEEDINGS UNDER CHAPTER 57, P. L. 1913, RELATING TO THE CROSSING OF THE HIGHWAY KNOWN AS WHITEHEAD'S ROAD AND THE TRACKS OF THE PENNSYLVANIA RAILROAD COMPANY AT THE SAME LEVEL IN THE TOWNSHIP OF HAMILTON, MERCER COUNTY.

ORDER.

The Board of Public Utility Commissioners, on its own motion, by virtue of the powers conferred upon it by "A Supplement to an act entitled 'An Act concerning Public Utilities; to create a Board of Public Utility Commissioners, and to prescribe its duties and powers' approved April 21st, 1911," which supplement was approved March 12th, 1913, and which constitutes Chapter 57 of the Laws of 1913, did, on the Twenty-first day of February, 1916, adopt an order initiating a proceeding and calling a hearing to determine whether the crossing of Whitehead's Road, in the Township of Hamilton, in the County of Mercer, and the railroad of the Pennsylvania Railroad, is dangerous to public travel, or whether public travel on such highway is impeded thereby, and to determine what, if any, order should be issued by said Board for the alteration of said crossing, by substituting therefor a crossing not at the grade of such public highway, either by carrying such highway under or over such railroad, or by reconstructing such railroad under or over such public highway, or by vacating, relocating or changing the line, width, direction or location of such highway, and the opening of a new highway in the place of the one ordered vacated, and to determine any and all other matters which may be involved and the determination of which may be within the power of such Board, in the sepa-

Grade Crossing—Whitehead's Road, Hamilton Township—P. R. R.

ration of the grade of such highway and of said railroad.

The Board gave the notice required by law to the parties in interest of the hearing to be held by it, and such hearing having been held, and it appearing to the Board that the crossing of Whitehead's Road, in the Township of Hamilton, in the County of Mercer, and the railroad of the Pennsylvania Railroad is dangerous to public safety and that the public travel on such highway is impeded thereby, and that the Pennsylvania Railroad Company is operating said railroad and that said crossing should be altered according to a plan approved by this Board, and such plan having been prepared,

Now, THEREFORE, it is on this Twenty-first day of March, Nineteen Hundred and Sixteen, ORDERED, and the said Board of Public Utility Commissioners by virtue of the powers and authority vested in it by the aforesaid act of the Legislature of this State, DOES HEREBY ORDER the Pennsylvania Railroad Company to alter such crossing according to the plan annexed to and made part of this order and marked "Location Plan of Bridges over New York Division and under P. & N. Branch to Milham Junction on Line of Whitehead's Road Hamilton T'w'p., Mercer Co., New Jersey. Scale 1" = 100' Engineering Department P. R. R., Philadelphia, Pa., January 17th, 1916," which said plan is hereby approved by said Board, and by reference thereto herein made part hereof, by substituting therefor a crossing not at the grade of such public highway by carrying such public highway over the tracks of the New York Division, and under the tracks of the P. & N. Branch to Milham Junction, according to and as shown on said plan for said purpose.

Any telegraph, telephone, gas, electric lighting, power, water, oil, pipe line or other company, corporation co-partnership, or individual whose property or construction

Grade Crossing—Whitehead's Road, Hamilton Township—P. R. R.

it may be necessary to change or remove to carry said plan and this order into effect, shall remove and change the same according to said plan.

And it is FURTHER ORDERED that the said Pennsylvania Railroad Company, the United New Jersey Railroad and Canal Company, Board of Chosen Freeholders of the County of Mercer, Board of Commissioners of the City of Trenton, the said Township of Hamilton and the Township Committee thereof, and their successors in office, the Public Service Gas Company, the Public Service Electric Company, the Delaware and Atlantic Telegraph and Telephone Company, the Postal Telegraph-Cable Company, and all other parties in interest, and each and every of them, proceed with due diligence to the execution of this order and comply with all the requirements thereof and the duties imposed upon them hereby and by the said Act under which this Order is made, and the laws of this State, and to that end they and each of them exercise in good faith all of the powers conferred upon them and each or any of them by the laws of this State.

And it is FURTHER ORDERED that the said Pennsylvania Railroad Company begin the actual work required in the performance and execution of this Order on or before June first, Nineteen Hundred and Sixteen, and perform and fully comply with the directions and requirements of this Order and complete all of the work required thereunder to be done within eight months thereafter.

This Order shall take effect April 14th. 1916.

Dated March 21st, 1916.

David Kaufman & Sons Co. vs. D., L. & W. R. R. Co.

No. 338.

DAVID KAUFMAN AND SONS COMPANY

VS.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.

The Board finds that a rate of \$1.21 per ton on scrap iron from Netcong to Elizabethport district is unjust and unreasonable and finds and determines a rate of ninety cents per gross ton to be just and reasonable.

Lewis Kaufman, for the Complainant.

W. J. Larrabee for the Delaware, Lackawanna and Western Railroad Company.

The complaint in this case alleged an excessive rate on scrap iron from Netcong on the Delaware, Lackawanna and Western Railroad to the plant of the complainant at Elizabethport on the Central Railroad, complainant contending that the rate on scrap iron of \$1.21 per ton between said points is unreasonable and should not exceed the rate on pig iron.

The scrap iron shipments moved from Netcong, at which point is located the plant of the Musconetcong Iron Company, manufacturers of pig iron. In 1908 this Company came under the control of the Singer Manufacturing Company of Elizabethport. Prior to the change of ownership, the all-rail rate on pig iron from Netcong to Elizabethport was 90 cents per ton and the rate by water and rail 70 cents per ton; the latter movement being over the Delaware, Lackawanna and Western Railroad to Hoboken and from said point to Elizabethport by boat. Subsequent to the change of ownership, request was made for an all-rail rate

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direct to the plant of the Company at Elizabethport located on the Central Railroad, and to meet the water rate, the all-rail rate was adjusted on the water rail rate basis of 70 cents per ton, which was increased to 74 cents per ton under the recent general advance in freight rates.

The present rate on pig iron cannot be taken as a determining basis for the reasonableness of the rate for the movement of pig iron from Netcong to the Elizabethport District, as said rate is controlled by the water-rail rate; and in the absence of the water competitive rate pig iron would be listed as taking a higher rate from Netcong.

In connection with the suggestion that there should be an equalization of the rate on scrap iron and pig iron, the volume of traffic of these commodities should be considered. Scrap iron movements are only occasional; and Netcong being a pig iron producing point, there is not only a considerable movement of outbound traffic, but in addition to the volume of such traffic the freight revenue from the several classes of ores and ingredients of pig iron shipped into Netcong from the various mines should also be considered as a factor in fixing the pig iron rate. Commodities moving in large quantities invariably take a lower rate as against a commodity moving occasionally, even though the value per ton of such product is higher than of the commodity moving occasionally.

The Board finds and determines that the rate of \$1.21 per ton on scrap iron from Netcong to the Elizabethport district is unjust and unreasonable, and finds and determines a rate of ninety cents per gross ton to be just and reasonable.

The Board therefore ORDERS that a rate of 90c per gross ton be fixed by the Delaware, Lackawanna and Western Railroad Company to apply on scrap iron between Netcong and the Elizabethport District; and recommends that the

In re rates—Burlington Sewerage Co.

charges on the eleven cars of scrap iron forwarded from Netcong to the complainant during the months of June and July, 1915, be assessed on said basis.

This order shall become effective April 14th, 1916.

Dated March 22nd, 1916.

No. 339.

IN THE MATTER OF THE APPLICATION OF THE BURLINGTON
SEWERAGE COMPANY FOR APPROVAL OF A NEW SCHEDULE
OF RATES.

It is claimed that the "Public Utility Act" having conferred upon this Board the power to fix rates, the contractual obligations assumed by the petitioner toward the City of Burlington with respect to rates are not binding upon the Board and the Board may allow the increased rates asked for. The Board agrees that the power of municipalities to provide by contract with public utilities respecting rates is subject to the power of this Board to fix rates and that ordinance provisions contravening this power must give way.

It does not appear that denial of an increase will involve such loss and hardship as to make it impossible for the company to render safe, adequate and proper service. Nor does the question of discrimination in rates arise.

In this situation the Board is unwilling to relieve a utility which, with all the deliberation necessitated by a compliance with the statute from which it derives its being enters into a contract, from the self-imposed limitations of the contract.

J. Fithian Tatem, for the Company.

Ernest Watts and V. C. Palmer, for the City of Burlington.

The Burlington Sewerage Company was incorporated in the year 1900 to provide the city of Burlington with a method of disposing of its sewage. It was organized under

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Chapter 210 of the Laws of 1898. Section one of that Act provides that not less than seven persons may organize a company for the purpose of constructing, maintaining and operating a system of sewerage in any municipality in this State.

Section two provides that "such persons" (the incorporators) shall execute "a certificate in writing which shall state the corporate name adopted by the company, the amount of the capital stock, the term of existence, the number of directors, the names of those who shall manage the affairs of the company for the first year, or until their successors are elected and qualified, and the name of municipality in or for which such sewerage system is to be constructed and the business of such company carried on; such certificate shall be filed in the office of the Secretary of State, together with the consent in writing of and the terms and condition or conditions upon which the consent has been granted by the corporate authorities, if any, of the municipality in which such sewerage system is to be constructed."

The Act then provides that when such "certificate, conditions and consent shall have been filed as aforesaid" the persons shall be a body politic and corporate, with power to enter upon and condemn lands necessary for its corporate purposes.

Section twelve of the Act provides that upon application to the corporate authorities for the consent, as provided in Section two of the Act, said authorities may provide that such consent shall be conditioned upon certain terms, "and said corporate authorities shall annex to such consent the maximum prices or rents that may be charged property owners or others for the use of such sewerage system, and any further or other terms and condition or conditions

In re rates—Burlington Sewerage Co.

upon which said consent is granted; if the certificate referred to in section two hereof be filed, there shall be annexed thereto and filed therewith a copy of the terms and condition or conditions upon which such consent is granted, and such filing shall be conclusive evidence that said corporation has assented to said terms and condition or conditions, and the same shall be deemed and taken to be binding and operative upon said corporation, its successors and assigns."

Section Fourteen reads as follows:

"Said Company may contract with property owners and others for the use of said system of sewerage for such price or prices, or quarterly or annual rents, and such restrictions as said company may think proper; PROVIDED, that the same shall in no case exceed the maximum rates which may be named in the terms and condition or conditions on which the consent of the corporate authorities shall have been obtained."

In this case the corporate authorities in compliance with the statutory direction that they "annex to such consent the maximum prices or rents that may be charged," provided in the ordinance giving consent and permission to the petitioner to construct its sewerage system in the City of Burlington for certain maximum prices to be charged property owners for the use of the sewerage system.

For a dozen years or more the company has operated in the City of Burlington under the law and ordinance above stated. It does not deny that but for the passage of the Public Utility Act of 1911 it would be its duty to continue to serve the property owners of Burlington in accordance with that statute and ordinance. It claims, however, that the Public Utility Act having conferred upon this Board the power to fix rates, the contractual obligations assumed by it towards the City of Burlington with respect to rents

In re rates—Burlington Sewerage Co.

are not binding upon the Board and we may allow the increased rates asked for. We agree with the contention that the power of municipalities to provide by contract with public utilities respecting rates is subject to the power of this Board to fix rates and that ordinance provisions contravening this power must give way.

The question is shall this utility be relieved by this Board of its obligation to live up to a contract with the City of Burlington.

In the matter of the application of rates of the Wildwood Water Works Company to the Borough of North Wildwood this Board said:

"While this Board has the power to fix rates and establish rules and practices governing service without regard to ordinance provisions or contracts between municipalities and utilities, we would not feel disposed to exercise such power to relieve a utility from the burden assumed by such ordinance or contract in any case where it appeared that a municipality or its inhabitants would under such ordinance or contract receive rates or service more advantageous than this Board would be justified in ordering, unless it appeared that such ordinance or contract imposed terms involving such loss and hardship as to make it impossible for the company to render safe, adequate and proper service. A company may agree to give rates and service upon terms that will not accord to its stockholders a fair return upon the capital invested. We would not be disposed to permit an increase of rates in any case where an agreement between a municipality and a utility exists, if the only benefit from such increase of rates is an increase of dividends. In such case the company would be presumed to have acted with a knowledge that its earnings would be reduced by such terms and to be willing to wait for adequate returns upon the investment."

The present case seems to call for an application of the doctrine there laid down. If this Board is to set aside the contract made by the petitioner it should appear that the terms of the contract involve "such loss and hardship as to make it impossible for the company to render safe, adequate and proper service."

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There were three appraisals made of the plant and property of the petitioner. Mr. Boardman for the petitioner placed a valuation thereon which included engineering and organization expenses and interest during construction, with depreciation deducted of \$89,081.22. Mr. Herbert for the city gave a valuation, which included the same items as Mr. Boardman's, of \$83,613.29, and Mr. Webster, another appraiser for the city, valued the company's property at \$66,713.39. Mr. Webster, however, allows only \$813 for all organization expenses and he estimates the depreciation to be considerably higher than either Mr. Boardman's or Mr. Herbert's estimate of that item. We are, for the purposes of this case, willing to assume that the value of the company's property is in the neighborhood of the figures fixed by Mr. Herbert and Mr. Boardman, and we shall assume without so deciding that Mr. Boardman's estimate, the highest, is to be taken as the value of the petitioner's property used and useful in the service of the public, that is to say, \$89,081.22.

The following is a statement of the earnings and expenses of the company from the year 1909 to 1913, inclusive:

	Total Earnings	Total Expenses	Net Earnings
1909	\$6,904.05	\$5,215.12	\$1,688.93
1910	7,137.08	5,403.17	1,733.91
1911	8,127.88	6,274.91	1,852.97
1912	8,442.07	5,877.90	2,564.17
1913	8,668.83	6,450.26	2,218.57

It will be seen that the company is earning more than two and one half per cent. on the value of the property devoted by it to the public use. Rates that will produce that income cannot be said to be confiscatory. It does not appear that the denial of an increase in rates will involve such loss and hardship as to make it impossible for the company to render safe, adequate and proper service.

In re rates—Burlington Sewerage Co.

Nor does any question of discrimination in rates arise.

In this situation the Board is unwilling to relieve a utility which, with all the deliberation necessitated by a compliance with the statute from which it derives its being, enters into a contract, from the self imposed limitations of that contract. In so doing the Board would be using the power conferred upon it by the State to set aside a contract entered into under the statute for the benefit of one of the parties which it could not itself set aside. Every other legal entity, human or corporate is bound by its contracts. A utility should not be an exception to the rule and unless a condition similar to those mentioned above justifies the Board's interference it will leave the parties where it finds them.

Dated March 22nd, 1916.

DISSENTING OPINION BY COMMISSIONER
DONGES.

I vote with my colleagues to deny the application to increase rates.

My conclusion, however, is based upon different reasoning from that upon which they rely.

Chapter 210, Laws of 1898, provides the municipal consent is requisite to the formation of sewerage companies, which "consent in writing of the terms or conditions upon which the consent has been granted by the corporate authorities" shall be filed with the certificate of incorporation in the office of the secretary of state. It further provides that the "corporate authorities shall annex to such consent the maximum prices or rents that may be charged property owners or others for the use of such sewerage system," and * * * "such filing shall be *conclusive evidence* that said corporation has assented to said terms and con-

In re rates—Collingswood Sewerage Co.

dition or conditions, and the same shall be deemed and taken to be binding and operative upon said corporation; its successors and assigns."

The company and municipality appear to have followed the statute, and the present status is the direct consequence of compliance with the statute.

It is the duty of this Board to construe statutes, but not to pass upon their validity. It is the duty of this Board to determine whether the municipal action is a compliance with the statute, but it is not its duty to pass upon the validity of such action where express statutory sanction thereof exists. That is a function of the courts.

I conclude, therefore, that this Board should not assume, in the circumstances of this case, to alter a relationship explicitly and definitely created by statute, and must refuse to sanction the charging of rates by this Company in excess of those fixed in the consent of the municipality, filed by the Company with its certificate of incorporation, as directed by the statute, and thereby accepted by the Company.

Dated March 22nd, 1916.

No. 340.

IN THE MATTER OF THE APPLICATION OF THE COLLINGSWOOD
SEWERAGE COMPANY FOR APPROVAL OF A NEW SCHEDULE
OF RATES.

The Board holds that while in this case it would not be justified in annulling against the protest of the municipality the contract under which the company is bound to afford service at its existing rates to those who can be given the same with the distribution system as now constructed, it does not appear that its financial condition is such that the Board can require it to make extensions.

In re rates—Collingswood Sewerage Co.

J. Fithian Tatem, for the company.

F. D. Weaver, for the Borough of Collingswood.

J. D. Wescott, for Citizens of the Borough of Collings-

This case is governed by the views expressed by the Board in the Burlington Sewerage case just decided. The petitioner was organized under the "Sewerage Company Act" of 1898 and was incorporated in 1900. Pursuant to the provisions of that act it applied to the Borough of Collingswood for the necessary consent to establish its plant and distribution system and the Borough passed an ordinance granting the consent and fixing the maximum rates to be charged by the Company. The Company established its plant and for the last thirteen or fourteen years has been operating under the rates fixed by that ordinance and consent. It does not appear that the refusal to allow the increase of rates requested will result in the rendition of unsafe, inadequate or improper service to those to whom the Company is under obligation to serve with its present facilities, nor does it appear that the rates are so low as to be confiscatory. No question of discrimination in rates arises. The Board is not inclined therefore to set aside a contract solemnly entered into between the Borough and the petitioner.

The following statement will show that the company earns a return of more than three per cent. upon the valuation of its property as testified to by the company's expert and also as taken from the books of the company.

Boardman's estimate of cost to reproduce.....	\$149,187.61
Company's Book cost	151,918.00

As Boardman's estimate of depreciation was \$10,724 and the amount carried on the company's book is \$12,142, the

• In re rates—Collingswood Sewerage Co.

present value of the plant, used and useful in the public service is about \$139,000. The gross income for the year 1913, (the last year in evidence) was \$12,433.36. The operating expenses, taxes and insurance were \$7,226.52, leaving a balance of \$5,200, which, as above stated, furnished a revenue of more than three per cent. upon the company's property investment.

wood.

Counsel for the petitioner suggested in his opening remarks at the first hearing the possibility of the existence of exceptional conditions in this case, which, if proven, might be sufficient to distinguish it from the Burlington Sewerage Company case. His statement was that the Collingswood Sewerage Company when it accepted its charter and the authorization and consent from the Borough of Collingswood to install its plant and distribution system in that Borough, contemplated the establishment of a disposal system which at that time appeared to be legal and satisfactory to the State Board of Health and had proceeded, with the work in reliance upon the sanction given by the State Board of Health; and after the expenditure of a considerable amount of money in the construction of a disposal plant, the Sewerage Commission, which came into existence at that time, ordered the installation of a different kind of sewerage disposal system, thereby increasing the investment cost. This suggestion, however, was not followed up by proof, and for the purposes of this case must be considered as abandoned by the petitioner.

Preceding the filing by the petitioner of its proposed new schedule of rates the Board received numerous applications for orders requiring the petitioner to make extensions of its service. Hearing was held on these applications and the conditions pertaining to the same were investigated by the Board's engineer. It appears those desiring to connect to

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the company's system cannot do so unless the system is extended at an expenditure of upwards of seven thousand dollars.

The statute provides that the Board may order extensions where, (Subdivision (c) Section 17 Public Utility Act)

"* * * in the judgment of the Board such extension is reasonable and practicable, and will furnish sufficient business to justify the construction and maintenance of the same, and when the financial condition of the said public utility reasonably warrants the original expenditure required in making and operating such extension."

While it appears that the Board would not be justified in annulling against the protest of the municipality, the contract under which the company is bound to afford service at its existing rates to those who can be given the same with the distribution system as now constructed, it does not appear that the financial condition of the company is such that it can be reasonably expected to obtain the seven thousand dollars of new capital needed to make extensions. There appears to be no doubt of the desirability of these extensions, but the Board is unable to find that it is reasonable and practicable for the company in its present financial condition to make them. We must therefore decline to order them. It seems to us that this is a matter which should be given serious consideration by the Borough as it may be that relief can be had only by municipal action which will make it possible for the utility to obtain new capital.

Dated March 22nd, 1916.

DISSENTING OPINION.

By Commissioner Donges:

I vote to deny the application for an increase of rates for the reasons expressed by me "In the matter of the

Ocean City Electric Co.—Stock and bond issues.

application of Burlington Sewerage Company for approval of a new schedule of rates.”

Dated March 22nd, 1916.

(Signed)

RALPH W. E. DONGES,
Commissioner.

No. 341.

IN THE MATTER OF THE APPLICATION OF THE OCEAN CITY
ELECTRIC COMPANY FOR APPROVAL OF ISSUANCE OF
\$350,000 PREFERRED STOCK, \$174,000 AND \$1,000 COM-
MON STOCK.

Projects such as this, which involve the harnessing of natural resources should be capitalized so that the public secures advantage and the promoters should be allowed such sum for the collocation of the water power as reasonably represents a return for vision and enterprise.

The general public must be permitted to share in values so ascertained.

Garald Ronon and Charles S. King, for the Company.

Under date of November 19th, 1915, there was presented to the Board an application by The Ocean County Electric Company for approval of issues of Preferred and Common Stock, the proceeds of which were to be used for the construction of a hydro electric plant on the Toms River in Ocean County, a short distance above the town of Toms River.

It appears that this application is the culmination of a project which was commenced a number of years ago, looking to the development of water power in the location proposed. The company has been organized under an Act of the Legislature, P. L. 1897, P. 384, which authorizes the formation of companies for the development of water power upon rivers within this State or located between this and other

Ocean City Electric Co.—Stock and bond issues.

states. The Company's application was for the approval of an issue of \$350,000 of preferred stock and \$175,000 of common stock. The proceeds of the preferred stock were to be used for the acquisition of the real estate and the construction of the dam, water wheels, generators and accessory apparatus, and the construction of a transmission line about one mile in length to reach the plant of the Toms River and Island Heights Electric Light and Power Company. The common stock, to the amount of \$175,000 was to be used to provide for the organization of the Company, the cost of preliminary investigation, surveys, searches, the obtaining of options and other valuable services of similar character, the expenditures for which have been going on for a number of years. The proceeds of the issue of common stock were also to recompense the promoters of this project for the value of the water powers in addition to the value which the separate items of real estate would have. considered as farm or forest lands.

The Act under which the company is incorporated provides that the preferred stock shall not exceed two-thirds of the total stock issued in connection with the financing of the project.

At the hearing there was submitted by the Company, testimony to indicate that there was a need for the development of this water power and the purpose underlying the issue of securities by this company will therefore meet with the approval of this Board.

Under an Act passed in 1913, Chapter 107, the plans under which any dam is to be constructed must first meet with the approval of the State Water Supply Commission. Under the terms of this Act, application was made to the Water Supply Commission for the approval of the plans and under date of January 26th such approval was granted.

The matter was considered by the Board at hearings on

Ocean City Electric Co.—Stock and bond issues.

various dates in December, 1915, and March, 1916, and as already stated, the Board will approve the purpose for which the securities are to be issued and will approve also securities sufficient in amount,, in the opinion of the Board, to finance the construction of the company's plant. The estimated cost of the dam and the hydro electric development is \$334,000. To this should be added the estimated cost for constructing the transmission line from the new plant to the plant of the Toms River and Island Heights Electric Light and Power Company, amounting to \$6,000. This makes a total of \$340,000 required for the physical construction of the plant and includes the amount of money which will be actually required to pay for the necessary real estate. It does not, however, include the amounts necessary to pay the cost of preliminary investigation, searches, surveys, the expenses involved in obtaining options on the property, nor anything to represent the value of the water power itself. It was testified to by Edmund S. Fritz, that the expenditures already made by him or obligated in connection with surveys, searches and preliminary engineering, amounted to \$10,500 and these expenditures appear to be legitimate and will be allowed.

With reference to the value of the water power, we are confronted with the fact that although several attempts have been made to develop the water power on the river in question, up to the present time none of these attempts has been successful. The Board is inclined to be conservative in allowing value for the water power. It is not unusual to arrive at the value of water powers by comparing the operating cost of steam plants and hydro electric plants and in this way arrive at the saving in the cost of production in one plant as compared with the other. The amount of savings capitalized on a reasonable basis would represent the maximum value which the water power could have, or,

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in other words, would represent the maximum basis which would justify the development of a water power.

Projects, such as this, which involve the harnessing of natural resources should be capitalized so that the public secures advantage, and the promoters should be allowed such sum for the collocation of the water power as reasonably represents a return for vision and enterprise. Of such values, so ascertained, the promoters cannot alone have the advantage. The general public must be permitted to share in it. Any other rule would result in imposing upon the public the necessity of paying rates upon the cost of the more expensive method of power development though the less costly method was employed.

Testimony was submitted showing the estimated savings due to the operation of the hydro electric plant over those of an equivalent steam plant. The estimates of saving vary considerably, depending upon the estimated output of the plant and for the purpose of this report we do not think it necessary to go into the detail involved in those calculations.

We have concluded to approve the issue of stock in the par value of \$370,000. This amount includes an allowance for the valuation of the water power.

The stock to be approved will be divided approximately one-third common stock and two-thirds preferred stock, or \$124,000 common stock and \$246,000 preferred stock, to be sold for cash at par.

A certificate approving the issuance of the stock as above stated will be issued.

Dated March 27th, 1916.

In re demurrage rate, etc.

No. 342.

**IN THE MATTER OF APPLICATION FOR REDUCTION IN FREE
TIME AND INCREASE OF DEMURRAGE RATE APPLIED TO
CARS USED IN TRANSPORTATION BETWEEN POINTS IN NEW
JERSEY.**

The Board is of the opinion that it should not, because of temporary congestion of traffic, approve a rule for demurrage inconsistent with the statute.

D. E. Minard, for the Erie Railroad Company.

C. T. Phillips, for the Delaware, Lackawanna & Western Railroad Company.

A. H. Strong, *M. Trump* and *A. C. Wall*, for the Pennsylvania Railroad Company.

J. E. Reynolds, for the Central Railroad Company of New Jersey.

R. W. Barrett, for the Lehigh Valley Railroad Company.

J. J. Beattie, for the Lehigh and Hudson River Railway Company.

M. M. Best and *E. H. Best*, for Jersey City Chamber of Commerce.

Mr. Noble, for Park-Noble Lumber Company.

K. L. Schickfus, for the Standard Bleachery Company.

J. F. McNulty, for S. T. Reyerson and Company.

Application is made to the Board on behalf of certain railroads operating in this state for the Board's approval of a rule providing for an increased demurrage rate on

In re demurrage rate, etc.

cars from the present rate to \$1.00 per car per day for the first three days after the expiration of forty-eight hours free time, and \$2.00 per car per day thereafter, the increase to extend up to and including June 30th, 1916, and thereafter if deemed necessary. It is claimed that the prompt movement of traffic is impeded because of accumulations of cars at terminals and that this is due in part to the failure of shippers and consignees to use due diligence in returning cars for movement over the carriers' lines. It is represented that the Interstate Commerce Commission has permitted the filing of a rule, similar to that proposed, to be applied to cars moving in interstate traffic and this Board is asked to take similar action with respect to cars moving wholly in intrastate traffic. On this application informal hearing has been held. The rule prescribed by statute with respect to demurrage is as follows:

"Where the consignee of property transported by railroad to any point in this state cannot be found, or refuses to receive and pay charges and remove such property, the company may make and collect a reasonable charge not exceeding one dollar per day, for the detention of any railroad car containing such property, or for the use of the railroad track, occupied by such car or for both such detention and use; provided, no railroad company shall be entitled to impose, demand or collect any charge for delay in unloading goods from any railroad car, or for detention of such car commonly called demurrage or car service, until after the expiration of three whole days, at least, exclusive of Sundays, from the time such car has been placed in proper position for unloading, and has, except removal for convenience of railroad operation, not exceeding one working hour daily, so remained; and provided further, that notice is given to the consignee or owner or to the shipper in cases where the consignee or owner cannot be found on whom to serve such notice, and to add such charge to the charge for the transportation of such property." (Chapter 257, P. L. 1903.)

It is not contended that the rule prescribed by the statute is in its general application unreasonable or that it does not fairly meet normal conditions of traffic. The Board is of

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the opinion that it should not, because of temporary congestion of traffic, approve a rule inconsistent with the statute. The Board, however, believes that shippers and consignees should make reasonable efforts to co-operate with the railroads in relieving the traffic congestion and RECOMMENDS that all cars, particularly those received at the terminals opposite the City of New York, be unloaded promptly and so far as is practicable before the expiration of the free time.

Dated April 5th, 1916.

No. 343.

ISAAC STEIN, ET AL.,

VS.

CONSOLIDATED GAS COMPANY OF NEW JERSEY.

A municipal ordinance directed removal by a public utility of overhead wires and cables and provided for an underground system. The company adopted a rule requiring customers to pay the entire cost of the conduit and cable from the curb line into the building; the cost of the cable terminal inside the customer's premises, and the cost of the main line switch and cut out with its enclosing iron box.

Complaint that this is an unreasonable rule is sustained. Attention of the respondent is directed to a rule regarded as reasonable.

W. A. Stevens, for complainants.

H. C. Abell and *F. R. Cutcheon*, for the Company.

Under date of March 15th a formal complaint was received from Isaac Stein and five others, customers of Consolidated Gas Company of Long Branch, alleging that the company was attempting to impose upon them unreasonable charges for establishing underground electric connec-

Isaac Stein, et al. *vs.* Consolidated Gas Co. of N. J.

tions between the premises of the complainants and the distribution system of the respondent. Answer was made by the company under date of March 24th and at the hearing on March 31st the complainants and respondent agreed upon certain statements of fact in the complaint and answer.

On November 27th, 1912, an ordinance was passed by the city designating certain streets from which overhead wires and poles were to be removed, excepting such poles as were required to support the municipal street lamps, and providing for the construction of an underground conduit system and the installation of cables.

The Consolidated Gas Company installed a system of overhead wires, and has commenced the installation of an underground conduit system in that portion of Long Branch referred to in the ordinance of November 27th, 1912.

By the terms of this latter ordinance the overhead wires are to be removed not later than May 1st, 1916. With this in view, the company has prepared complete plans and specifications for the construction of the underground system which includes main line conduits and cables located within the streets, and underground conduit and cable connections to its customers. The main line conduits and manholes have been installed but the service connections to various customers had not all been installed on the date of the hearing. The reason for this was the failure of the company to come to an agreement with such customers as to the method of dividing the cost of installing the underground connections. Under the rules adopted by the company, the customer is required to pay the entire cost of the conduit and cable from the curb line into the building; the cost of the cable terminal inside the customer's prem-

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ises; and the cost of the main line switch and cutout with its enclosing iron box.

The complainants allege that the imposition by the company of these items of expense upon the customer is unjust and unreasonable, particularly in view of the fact that the change from overhead to underground service involves material changes in the customer's wiring which must, of course, be paid for by the customer, as it is no part of the company's system.

With this contention the Board agrees, particularly as the largest company in this state whose business represents more than half of the total electric light and power business in the state, has adopted and filed with us rules and regulations which result in imposing no charge upon a customer served from an underground system, providing the distance to the customer's premises is not greater than thirty feet when measured from the curb line.

The rule adopted by the Public Service Electric Company with reference to underground connections from an underground system reads as follows:

"5. A service connection not exceeding thirty feet in length from the curb shall be made without cost to customer. Excess is to be paid for by the customer at the rate of fifty cents per foot."

A similar rule should be adopted by the respondent.

The cable terminal is part of the cable system and the expense of installation should be borne by the company. The main line switch and cutout and the iron box enclosing the same are part of the interior wiring of the building and form no part of the company's distribution system. These items should be installed at the expense of the customer, and in accordance with the rules laid down in the National Electrical Code, but the company may not impose upon the customer the obligation of having these items installed

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exclusively by it. As the main switch, cutout and enclosing box form part of the interior wiring of the building, they should be installed by the contractor who makes the alterations in the interior wiring. The Consolidated Gas Company may, of course, act as a contractor, but it is in such capacity and not as the electricity supply company that this work would be done.

The Board FINDS AND DETERMINES that the rules and regulations of the Consolidated Gas Company of New Jersey concerning underground service connections are unjust and unreasonable, and, therefore, DISAPPROVES the same. The Board will permit the filing of a new rule similar to that hereinabove recited.

By service connection, in the opinion of the Board, is included the conduit laid under the sidewalk and the cable which has to be pulled through the same and will include also whatever terminal the company believes is necessary on the end of the cable.

Under the above rule but one service connection need be run into a building, the distribution for the building being made from a central point in the basement (or just above the first floor where there is no basement) to the other portions of the building. In re-arranging the wiring, meters should be installed in accordance with Rule XVI of Rules, Regulations and Recommendations for Electrical Supply Utilities, adopted by this Board December 9th, 1913. This rule provides that meters

"should be located in the cellar or first floor as near as possible to the point of entrance in a clean, dry, safe place free from vibration, not subject to great variation in temperature, and the top of the meter board should not be more than six feet nor the bottom less than four feet above the floor, or above a suitable platform placed underneath the meter where it will be easily accessible for reading and testing." * * *

Woodbridge Township vs. Public Service Railroad Co.

"The installation of meters and connections shall be strictly in accordance with the rules of the National Electrical Code of 1913 and the utility furnishing the service."

Dated April 5th, 1916.

No. 344.

TOWNSHIP OF WOODBRIDGE

VS.

PUBLIC SERVICE RAILROAD COMPANY.

In considering this case the Board does not deem it necessary and, therefore, does not determine the question of its power to require a railroad to charge a fare less than ten cents.

Assuming that the Board has such power, it is unable to conclude upon the facts stipulated in the case that a lower fare should be imposed.

Walter I. Auten for complainant.

L. D. Howard Gilmour for Public Service Railroad Company.

Application is made by the Board of Education of Woodbridge Township to require the Public Service Railroad Company to transport High School and Grammar School pupils on "school tickets" on its line between Port Reading and Sewaren at which point they change to cars of Public Service Railway Company for carriage to the High School building near Woodbridge station of the Pennsylvania Railroad Co.

The Public Service Railroad Company is incorporated under the act for the incorporation of steam railroads.

The Railroad Company charges a fare of ten cents. The rate for a "school ticket," accepted by the Railway Company as a full fare is three cents.

Woodbridge Township vs. Public Service Railroad Co.

Counsel stipulated certain facts which are all that are before the Board.

The complaint practically rests upon the statement that complainant pays for the transportation of the school children who travel between Port Reading and Sewaren and Woodbridge school; that school tickets are accepted on Public Service Railway Company line, but not on line of Public Service Railroad Company; that the distance traveled by the pupils in question on the Railroad line is .894 of a mile; that the fare of ten cents charged for such travel is per se excessive and unreasonable; and that other railroad companies charge less than ten cents between certain designated points.

The Company answers that section 38 of the railroad act provides, inter alia that "no charge shall be required to be less than ten cents"; that for the charge of ten cents the passenger may ride the length of the fare zone, a distance of between four and five miles; that such fare is reasonable; and that the Board has no power to require a fare of less than ten cents to be charged.

The Board, in view of the conclusion reached, does not deem it necessary, and, therefore, does not determine the question of its power to require a fare of less than ten cents.

Assuming that the Board has such power, upon the facts stipulated in this case, the Board is unable to conclude that a lower fare should be imposed. The mere fact that a passenger desires to travel a distance of less than one mile would not, per se, serve to indicate that a fare of ten cents for travel of 4.754 miles is excessive. The cost of such transportation and the amount of earnings are not shown. Nor is any fact submitted from which the Board might conclude that the fare should be lower or charged on a basis other than the zone basis.

New York Telephone Co.—Resolution—Middlesex County.

The fact that other railroad companies charge five cents for travel between certain points cannot be taken to establish the propriety of a fare of less than ten cents between the points in question.

It is not shown by the record that the fare of ten cents is unjust and unreasonable, and the complaint will, therefore, be dismissed.

An order will so enter.

Dated April 18th, 1916.

ORDER.

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

It is ORDERED that the complaint in this proceeding be and it is hereby DISMISSED.

Dated April 18th, 1916.

No. 345.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK TELEPHONE COMPANY FOR APPROVAL OF RESOLUTION OF MIDDLESEX COUNTY BOARD OF CHOSEN FREEHOLDERS.

A careful study of the "Limited Franchise Act" convinces the Board that the Legislature in using the word "municipality" intended to include "County" and, therefore, the telephone company in obtaining the municipal consent here submitted for approval is required to comply with the provisions of the "Limited Franchise Act." Approval of resolution is withheld.

New York Telephone Co.—Resolution—Middlesex County.

H. C. Hale, for petitioner.

Frank H. Sommer, for the Commission.

Application is made to this Board for the approval of a resolution of the County of Middlesex passed November 29th, 1915, granting permission to the New York Telephone Company, its successors and assigns, to erect, construct, reconstruct, maintain and operate for its *local and through lines and systems*, its poles, wires, cables and other fixtures and appurtenances, upon, over and across the following described county road in the Township of Raritan, Middlesex County, New Jersey, to wit:

“Park Avenue, north of the road to Metuchen, for a total distance of about four hundred and twenty-five feet.”

Hearing was had upon the application on January 25th, 1916, and a brief was later filed by the petitioner. The approval of the resolution is asked under Chapter 195, III, 24, Laws 1911, which provides:

“No privilege or franchise hereafter granted to any public utility as herein defined, by any political subdivision of this state, shall be valid until approved by said Board, such approval to be given when, after hearing, said Board determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest, and the Board shall have power in so approving, to impose such conditions as to the construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require.”

The resolution submitted for consideration grants an original consent or permission to the telephone company from the Freeholders themselves to the use of a certain county road taken over by the County over twenty-one years ago (Test. p. 2) and not an approval merely of an existing grant from the Township of Raritan within which the tel-

New York Telephone Co.—Resolution—Middlesex County.

phone company's poles in question are placed. (Test. pp. 1 and 2.)

The use to be made thereof is to erect, construct, reconstruct, etc., poles and wires, etc., for its *local and through lines and systems thereon*.

The procedure adopted in the passage of the resolution and the authority claimed by the company therefor is based on Section 8 of the Telegraph Act as amended, Chapter 195, Laws 1909. No formal proceedings were taken in connection with the passage of the resolution other than those indicated by the Telegraph Act as amended.

The act in part provides:

"Sec. 8. Any telegraph company organized under the laws of this or any other state, or of the United States, or any company organized by virtue of this act, shall have full power to erect, construct, lay and maintain the necessary poles, wires, conduits and other fixtures for its lines in, upon, along, over or under any of the public roads, streets, and highways upon first obtaining the consent in writing of the owner of the soil to the erection of any such pole or poles and through, across or under any of the waters within the limits of this state, and upon, through or over any other land, subject to the right of the owners thereof to full compensation for the same; provided, however, that no pole shall be erected, nor shall any conduit, wire or other fixture be constructed or erected in, upon, along, over or under any of the public roads, streets, or highways of any municipality in this State without first obtaining from the governing body of such municipality permission therefor by ordinance or resolution and a designation therein of the street or streets, road or roads, highway or highways, in, upon, along, over or under which the same shall be erected or constructed;"

"And provided, also, that nothing herein contained shall require permission by ordinance or resolution to be obtained from the governing body of any municipality to erect, construct, lay and maintain the necessary poles, wires, conduits and other fixtures which are to be used as a part of a through line or system as distinguished from a local line or system; but for all such through lines or systems it shall be the duty of such governing body, on written application therefor being made as now required by law, to designate by resolution the street or streets, road or roads, highway or highways in, upon, along, over or under which such poles, wires, conduits or other fixtures shall be constructed, laid or erected," etc.;

New York Telephone Co.—Resolution—Middlesex County.

“And provided, also, that such a through line or system as is herein mentioned shall be construed to be one used strictly for through business and which line or system shall in no event be thereafter used for local business, or in any case as a local line or system, or as a part of any local line or system, without having first obtained permission by ordinance or resolution for such local use or as such a local line or system as hereinbefore provided.”

“And also provided, that where the use of any county road is desired in any county of this State for any local line or system, permission therefor by resolution and a designation therein of such road and of the portion thereof so to be used and of the location and the manner of placing, erecting and constructing such poles, conduits, or other fixtures shall first be obtained, in the manner hereinbefore set forth in the case of applications for local lines to the governing bodies of municipalities of the State, from the board of freeholders of such county before any work on such road is begun hereunder, and for any through line or system in, along, upon, over or under any county road, a designation shall be made by the board of freeholders under regulations and restrictions to be set forth as aforesaid and as hereinbefore provided in the case of application for through lines to the governing bodies of municipalities in this State;”

It is not disputed that the consent or permission granted by the resolution being for a “local line or system” as well as for a “through line or system,” the municipal consent or permission is requisite. And, moreover, the consent or permission granted being to erect or construct poles, wires, cables, etc., upon, over and across a certain county road, the municipal consent or permission should properly be obtained from the county authorities.

The only question submitted for determination is whether in obtaining the municipal consent or permission from the *county authorities* for the use of a county road, compliance with the provision of Chapter 36, Laws 1906, Limited Franchise Act, so-called, is required.

In re application of *Eastern Telephone Company for Approval of Ordinance*, Public Utility Reports, Vol. I, p. 733, *Eastern Telephone Company vs. Board of Public Utility Commissioners*, 85 (56 Vr.) 511; *E. & A.*, 93 Atl. 1084, this

New York Telephone Co.—Resolution—Middlesex County.

Board had before it two ordinances adopted respectively by the Borough of Avalon and the Board of Chosen Freeholders of the County of Cape May, granting “consent and permission” to the Eastern Telephone and Telegraph Company to erect and construct poles, etc., for its lines upon certain highways. The Board in speaking of Section 8 of the Telegraph Act as amended, used this language, page 737:

“This is the construction we adopt.

It seems to us to accord with the general legislative intent.

As to the through line or system, it denies to the municipality the power to refuse to designate a route.

As to the local line or system, it recognizes the possession of such power by the municipality.

As to the through line or system, it requires the designation by the municipality of a feasible route.

As to the local line or system, it requires that where the municipality in its discretion makes designation of a route, the route shall be feasible.

It leaves the designation of a route by the municipality for a through line or system outside the scope of the Limited Franchise Act, but brings the action of the municipality as to a local line or system, within the operation of that act.

Such construction likewise accords with the uniform practice of companies and municipalities with respect to grants of permission for the construction of local lines or systems since the enactment of the Limited Franchise Act. As in the case of the ordinances under consideration, the provisions of that act have been uniformly observed.”

And again on page 739:

“While what has been hereinbefore said is specifically applicable to the ordinance adopted by the Borough of Avalon it is also applicable to the ordinance adopted by the Board of Chosen Freeholders of the County of Cape May, for Section 8 of the Telegraph Act, as amended, makes its provisions relating respectively to through lines and systems and local lines and systems, applicable to county roads and applicable to Boards of Chosen Freeholders.”

The telephone company, however, raises the question that the word “municipality” as used in the Limited Franchise

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Act, does not include or mean “county,” and, therefore, compliance with the provisions of the Limited Franchise Act is not required.

The act provides, 2:

“No consent for the use of any street, avenue, park, parkway or other highway, either above, below or on the surface thereof, shall be granted by any municipality until a petition shall have been filed with the clerk of such municipality by the person or corporation desiring the same,” etc.

The precise question so raised has not been decided by our Courts. An examination of the authorities, however, shows that whether or not the word “municipality” as used in a given statute means “county” depends upon the legislative intent as expressed in the title and provisions of the statute itself.

In some instances the word “municipality” has been held not to mean “county.”

(1906) Wright vs. Campbell, 74 (45 Vr.) N. J. L., 82; E. & A., 609. In others the word “municipality” has been held to mean “county.”

(1906) Union Stone Co. vs. Board of Chosen Freeholders, 65 Atl. Rep. 466.

(1907) Herman & Grace vs. Freeholders of Essex Co., 71 (1 Buch.) N. J. Eq., 541; E. & A., 73 (3 Buch.) N. J. Eq., 415.

(1911) Jurgens vs. Booth, et al., 82 N. J. L. 206.

The Limited Franchise Act is an act entitled, “An act regulating the granting by municipalities of consent to the use of streets, avenues, parks, parkways and other public places.”

It regulates the procedure to be adopted by a municipality when granting certain rights to a utility company in its streets, avenues, parks, parkways and other public places.

It provides for notice and a public hearing to the inhabitants thereof.

New York Telephone Co.—Resolution—Middlesex County.

It acts as a safeguard of the rights of the public in the streets, avenues, parks, parkways and other public places.

It would seem, therefore, that the same requirements and restrictions imposed by that act upon a town, township, borough or city, in granting rights or franchises in streets, avenues, etc., apply with equal force to a county in granting rights or franchises in a "county road."

A careful study of the Limited Franchise Act convinces this Board that the Legislature in using the word "municipality" intended to include "county," and, therefore, the telephone company in obtaining the municipal consent here submitted for approval, is required to comply with the provisions of the Limited Franchise Act.

The Board withholds its approval of the resolution and the petition will be DISMISSED.

An Order will so enter.

Dated April 18th, 1916.

ORDER.

This application having been duly heard and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board's approval of this petition is withheld and the same is HEREBY DISMISSED.

Dated April 18th, 1916.

Acquackanonk Township vs, Erie R. R. Co.

No. 346.

TOWNSHIP OF ACQUACKANONK

VS.

ERIE RAILROAD COMPANY

AND

APPLICATION OF ERIE RAILROAD COMPANY FOR PERMISSION TO
DISCONTINUE THE HANDLING OF LESS THAN CARLOAD
FREIGHT AT CLIFTON, NEW JERSEY.

ORDER.

This case being at issue and having been duly heard and submitted by the parties, and investigation of the matters and things involved having been had, and the Board having on the 27th day of July, 1915, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof,

The Board of Public Utility Commissioners in accordance with the conclusions expressed in said report hereby finds and determines,

That the Erie Railroad Company does not furnish adequate and proper service in that it does not provide a suitable and proper approach to its freight station at Clifton in the State of New Jersey, and

HEREBY ORDERS that on or before June 1st, 1916, a level place be provided in front of said freight station on which a wagon may be placed in such close proximity to the freight station door that freight may be handled directly from the freight station to the wagon.

AND IT IS FURTHER ORDERED that the application of the Erie Railroad Company for permission to abandon said freight station at Clifton be and it is hereby DISMISSED.

This order shall become effective May 10th, 1916.

Dated April 18th, 1916.

New York Telephone Co.—Resolutions—Ocean County.

No. 347.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK
TELEPHONE COMPANY FOR APPROVAL OF A RESOLUTION OF
THE OCEAN COUNTY BOARD OF CHOSEN FREEHOLDERS.

H. C. Hale, for the petitioner.

Frank H. Sommer, for the Board.

Application is made to this Board for the approval of a resolution of the County of Ocean adopted by the Board of Chosen Freeholders of the County of Ocean October 5th, 1915, granting permission to the New York Telephone Company, its successors and assigns, to erect, construct, reconstruct, maintain and operate for its local and through lines and systems, its poles, wires, cables and other fixtures and appurtenances upon, over and across the following described county road in the Township of Jackson, Ocean County, New Jersey, to wit:

“State road for a total distance of about 850 feet west of the road from Cassville to Van Hiseville.”

Hearing was had upon the application on January 4th, 1916. The approval of the resolution is asked under Chapter 195, III 24, Laws 1911, which provides:

“No privilege or franchise hereafter granted to any public utility as herein defined, by any political subdivision of this state, shall be valid until approved by said Board; such approval to be given when, after hearing, said Board determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests, and the Board shall have power in so approving, to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require.”

New York Telephone Co.—Resolution—Morris County.

The Board withholds its approval of the resolution of the County of Ocean for the reasons set forth in a report filed by this Board in the matter of the application of the New York Telephone Company for approval of a resolution granted by the Board of Chosen Freeholders of Middlesex County, New Jersey, and the petition, therefore, will be DISMISSED.

An order will so enter.

Dated April 25th, 1916.

ORDER.

This application having been duly heard and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board's approval of this petition is withheld and the same is HEREBY DISMISSED.

Dated April 25th, 1916.

No. 348.

IN THE MATTER OF THE APPLICATION OF THE NEW YORK TELEPHONE COMPANY FOR APPROVAL OF A RESOLUTION GRANTED BY THE MORRIS COUNTY BOARD OF CHOSEN FREEHOLDERS.

H. C. Hale, for petitioner.

Frank H. Sommer, for the Board.

Application is made to this Board for the approval of a resolution of the County of Morris adopted by the Board of Chosen Freeholders of the County of Morris, December

New York Telephone Co.—Resolution—Morris County.

8th, 1915, granting permission to the New York Telephone Company, its successors and assigns, to construct, reconstruct, maintain and operate for its local and through lines and systems, its underground conduits, manholes, cables, wires and other fixtures and appurtenances, including the necessary street openings and lateral connections to curb poles and property lines, required in connection therewith, under and along the following described county road in the County of Morris, New Jersey, to wit:

“Speedwell Avenue, in the Township of Morristown, from the present manhole opposite Sussex Avenue, to a pole on the easterly curb line north of Thompson Street, for a total distance of about 3,040 feet.”

Hearing was had upon the application on February 1st, 1916. The approval of the resolution is asked under Chapter 195, III 24, Laws 1911, which provides:

“No privilege or franchise hereafter granted to any public utility as herein defined, by any political subdivision of this state, shall be valid until approved by said Board; such approval to be given when, after hearing, said Board determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests, and the Board shall have power in so approving, to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require.”

The Board withholds its approval of the resolution of the County of Morris for the reasons set forth in a report filed by this Board in the matter of the application of the New York Telephone Company for approval of a resolution granted by the Board of Chosen Freeholders of Middlesex County, New Jersey, and the petition, therefore, will be DISMISSED.

An order will so enter.

Dated April 25th, 1916.

New Jersey Gas and Electric Co.—In re mortgage and issues of stock and bonds.

No. 349.

APPLICATION NEW JERSEY GAS AND ELECTRIC COMPANY FOR APPROVAL OF ISSUE OF \$100,000 STOCK, \$1,500,000 MORTGAGE AND \$225,000 BONDS.

Application is made for approval of a proposed issue of bonds in the sum of \$225,000 at 85, and of \$100,000 of stock at par.

The Board approves the issuance of stock in the par value of \$75,000 and bonds at 95 in the par value of \$166,500.00.

George Whitefield Betts, for the petitioner.

The New Jersey Gas & Electric Company was organized January 29th, 1916, by the purchase at foreclosure sale of the property formerly belonging to the Dover, Rockaway & Port Oram Gas Company. The newly formed company now makes application to the Board for the issue of securities in accordance with the value of the property as it stands at the present time, without definite reference to the amount apparently paid for it in the foreclosure sale.

The company claims that according to its appraisal, the value of the property is \$263,094 and the company's application is based on this appraisal. At the hearing on March 21st, a supplemental petition was submitted, asking the Board's approval of securities in "such amount of bonds and such amount of stock as your Board may, in its judgment, deem proper." The application asks for the approval of a six per cent twenty-five year mortgage in the amount of \$1,500,000; and for the issuance thereunder of bonds in the sum of \$225,000 at 85; and also the approval of \$100,000 of stock at par.

It is proposed to issue \$190,000 of the bonds at 85, which would realize the sum of \$161,500. To this should be added

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and bonds.

the proceeds of the capital stock, \$100,000, making a total of \$261,500, which is approximately equivalent to the present replacement value claimed by the petitioner. It is proposed to use the remaining \$35,000 of bonds for certain additions and extensions to the company's system, these being made necessary to meet the large number of applications for service which have been on file for more than a year past.

The inventory and appraisal of this property, made by the engineers of the Board, indicates that the reproduction value of the property is approximately \$202,311. The present value of the physical property, with full theoretical depreciation deducted, is \$151,748. The present value, based upon an inspection of the property and upon the testimony submitted by the company as to the repairs now needed, is approximately \$180,000.

In addition to the physical property.....	\$180,000
there should be an allowance for:	
Foreclosure expenses	8,450
Materials and supplies and working capital.....	\$15,000
	<hr/>
	203,450
Estimated cost of new construction.....	29,750
	<hr/>

making a total of.....\$233,200
as a basis for the issuance of securities at the present time. The corresponding figure in the application of the company is \$290,000, which is in excess of the basis which the Board considers reasonable for the financing of the new company. The Board believes that at least one-third of this new capitalization should be in capital stock.

The Board will, therefore, approve the issuance by the company of No. 1. Capital stock at par in the amount of

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\$75,000; No. 2. The creation by the company of a mortgage in the amount of \$1,500,000; and No. 3. The issuance of bonds thereunder to provide the sum of \$158,200.

The petition of the company asks approval of the issue of bonds at 85. These bonds carry interest at six per cent. and the Board is of opinion that six per cent bonds ought to bring a better price than 85. An analysis of the testimony in this case shows that the bonds of this company have never been considered very favorably by the banking interests. This undoubtedly was due to the methods of financing in vogue under the former ownership, as a result of which there were three mortgages on this property, the total being far in excess of the value of the property.

Analysis of the earnings and expenses of the company indicates that under reasonably efficient management no difficulty should be experienced in paying interest at six per cent on these bonds, and the Board believes that they should be sold so as to net the company not less than 95.

The Board will, therefore, give its approval to the issuance by the New Jersey Gas & Electric Company of No. 1. Stock in the par value of \$75,000; No. 2. The creation of a mortgage of \$1,500,000; and No. 3. The issuance of bonds at 95 in the par value of \$166,500.

Dated May 2nd, 1916.

Ostend Realty Co. vs. Atlantic City Sewerage Co.

No. 350.

IN THE MATTER OF THE APPLICATION OF THE NORTHAMPTON, EASTON & WASHINGTON TRACTION COMPANY FOR APPROVAL OF ISSUE OF PROMISSORY NOTES TO THE AMOUNT OF \$200,000, AND FOR PERMISSION TO EXTEND EXISTING LINES FROM PORT MURRAY TO HACKETTSTOWN AND ISSUE SHORT TERM NOTES AND BONDS TO PROVIDE FOR THE PAYMENT OF COST OF SUCH EXTENSION.

The Board approves the purpose for which the notes in this matter are to be issued and the amount thereof.

In the present condition of the proofs, the Board does not give approval of the use of bonds, heretofore permitted to be issued, as collateral to secure the payment of the notes. Upon the submission to the Board of an agreement with the holder of the notes, assuring the receipt of not less than 80 per cent of par for all bonds sold to satisfy the notes, this Board will permit the pledging of the bonds.

The plan proposed at the hearing would seem to be satisfactory, but, in advance of approval, the Board requires the submission of the definite agreement upon which the pledge is based.

Dated May 2nd, 1916.

No. 351.

OSTEND REALTY COMPANY

VS.

ATLANTIC CITY SEWERAGE COMPANY.

Complaint is made of unreasonable and discriminatory charge, in that no reduction is made by respondent for service to hotel closed from October to May.

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The ordinance of the municipality gives the company the right to charge for the whole year without rebate for or on account of disconnection or non-use by the owner or lessee of the property for a portion of the year. The Board assumes that this affected the Council in fixing the rates and was also a reason impelling the company to accept the ordinance.

There is no testimony to show the rates to be unreasonable. The charge that the hotel in question is discriminated against is not sustained.

A. B. Endicott, for the complainant.

Jóseph Thompson, for the respondent.

The Ostend Realty Company filed a petition alleging that the Hotel Ostend is a "Summer House;" that it is open for the entertainment of guests from May until October; that it is closed during the remainder of the year and that it is charged at the same rate as other hotels which are open the entire year and entertain guests every day in the year.

It complains that for the reasons stated the charge is excessive and unreasonable and asks that the rate be reduced to one half of the present charge. On application at the hearing the petition was amended so as to allege discrimination against the Hotel Ostend for the same reasons. It further asks for a return of such part of the payment for the year last past that the Board may deem to be in excess of the reasonable charge.

This Board has not the power to order the refunding of money paid for bills rendered by utilities. Its powers are limited to those prescribed in the statute creating the Board and amendatory and supplemental acts.

It appears from the evidence that while the hotel is closed to guests for some months in the year it is occupied by caretakers and men making repairs to the property during those months.

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The Atlantic City Sewerage Company was organized in 1888. The ordinance under which the Atlantic City Sewerage Company operates was passed in 1905. It recites the great growth and development of Atlantic City and the necessity for the expenditure of large sums of money to meet the demands caused by this growth and development upon the company's system and in consideration of those facts and the express intention of the company to extend its system and plant the City Council permits it to charge the rates prescribed in the ordinance. The following is the provision which the company relies upon as authority for the making of an annual charge to hotels and boarding houses which are not open the full year for the entertainment of guests:

"That the company may charge and collect, annually in advance for sewer service to be performed by it, the following rates per year, without rebate for or on account of disconnection or non-use by owner or lessee of the property for a portion of the year.

"For each hotel or boarding-house, connected with the sewer, seventy-five cents for each sleeping room, not exceeding thirty rooms, and fifty cents for each sleeping room in excess of thirty, and an additional charge of fifty cents for each fixture connected with the sewer, in such hotel or boarding house."

It is provided in Section 8 of the ordinance that in consideration of the rates therein authorized the City of Atlantic City shall have the right to purchase the entire sewerage system of the respondent for the sum of \$75,000 and such additional amounts as may have been expended between the time of the acceptance of the ordinance and the purchase and the assumption of a mortgage upon the property.

It is apparent from the above facts that although the hotel is closed for part of the year to guests the use of the company's system is had for the full year because of the

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occupancy of the hotel by others than guests. We think therefore that the charge that the hotel in question is discriminated against because it is not open for the reception of guests during certain months of the year is not sustained. Where a company's system of charges is the flat rate one the Board will not in a case like the present attempt to set said rate aside merely because the building is occupied by a few persons only throughout the year.

The section of the ordinance, above quoted, which gives the company the right to charge for the whole year, without rebate for or on account of disconnection or non-use by the owner or lessee of the property for a portion of the year, we presume was a reason actuating the Council in fixing the rates as stated in the ordinance and also a reason which impelled the company to accept the ordinance. Doubtless but for such provision both the Council and the respondent would have settled upon higher rates for such hotels as might not be open the entire year.

While we would not allow such provision to stand in the way of the adjustment by the Board of unreasonable rates the respondent company having been organized before the Sewerage Act of 1898 and therefore not within the purview, we will assume the rates there specified to be reasonable because there is no testimony adduced to show their unreasonableness.

An additional reason impelling us to refrain from interference with these rates is found in the provision of the ordinance referred to which gives Atlantic City the right to purchase the system and plant of the respondent at the price therein stated. We must presume that the price fixed was based upon the right to charge the rates fixed, for the company not only agrees to transfer its system and plant but also its franchises. If the Board should interfere with the rates stated in the ordinance such interference might be

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the basis for an allegation, that the contract between the city and the Atlantic City Sewerage Company had been changed by the action of the Board and that, therefore, if in the future the city takes over the system of the respondent, the purchase price mentioned in the ordinance would not be binding upon the parties by reason of such action of the Board.

The petition therefore will be **DISMISSED**.

Dated May 9th, 1916.

ORDER.

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

It is **ORDERED** that the complaint in this proceeding be and it is **HEREBY DISMISSED**.

Dated May 9th, 1916.

No. 352.

IN THE MATTER OF THE APPLICATION OF THE MONMOUTH LIGHTING COMPANY FOR PERMISSION TO ISSUE \$26,700 BONDS.

It appears that the Board under date of August 25th, 1915, authorized the issue of \$24,600 stock and \$4,000 bonds for the purpose of obtaining funds to pay for the same construction work as that covered by the present applica-

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tion. Pursuant to such authorization a certificate approving the actual issue of \$3,600 stock was given by the Board on November 8th, 1915, for part of the work. The balance of stock, namely \$21,000 and the bond issue of \$4,000 authorized were never taken down.

The present application, therefore, is that the previous order of the board shall be superseded and that instead of \$24,600 stock and \$4,000 in bonds the Board shall now give permission for the issue of \$26,700 bonds. No explanation is made of the necessity for this change. In view of the failure to show the necessity for any change in the original certificate of the Board, we decline to grant the present application.

Dated May 9th, 1916.

No. 353.

DAVID C. LEONARD

VS.

JERSEY CENTRAL TRACTION COMPANY.

David C. Leonard, in person.

Henry D. Brinley, for respondent.

ORDER.

This matter having been heard on issue joined by the complaint of David C. Leonard and the answer of the Jersey Central Traction Company thereto, the Board after such hearing finds and determines that the said Jersey Central Traction Company does not furnish adequate and proper service and

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HEREBY ORDERS the Jersey Central Traction Company to enclose the space between the ground and the sills of its shelter shed in Leonard Avenue at Leonardo, New Jersey, on the east and north sides of said shelter shed, and

FURTHER ORDERS the Jersey Central Traction Company to keep the said shelter shed lighted each night during the hours of darkness when cars of the said company are operated through Leonardo.

This order shall become effective June 1st, 1916.

Dated May 9th, 1916.

No. 354.

NATIONAL LEAGUE OF COMMISSION MERCHANTS, ET AL.,

VS.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Complainants allege an excessive charge on shipments of berries from Elm, on the New Jersey Southern Division of the Central Railroad of New Jersey, to Jersey City.

The Board finds that the berry trade demands fast service and that this is furnished, that the revenue derived is not excessive and that a comparison with other rates does not indicate that the rates complained of are unreasonable.

Wm. B. Phillips and *G. D. Jones*, for complainants.

C. E. Miller, for respondent.

The complainants allege that the rate on berries from Elm, located on the New Jersey Southern Railroad, a subsidiary company of the respondent, to Jersey City is excessive, in that it exceeds the rate on peaches.

The main line of the New Jersey Southern Railroad extends from Red Bank to Bay Side on the Delaware River, a distance of 105 miles; Jersey City to Elm, 103 miles; and Jersey City to Bay Side, 146 miles. At Red Bank, connection is made with the New York & Long Branch Railroad to Perth Amboy, and from Perth Amboy to Jersey City on the Perth Amboy & Elizabeth Branch and Main Line tracks of the Central Railroad.

From Red Bank to Bay Side, the railroad is single track, and runs through a sparsely populated section of the State, with few manufacturing industries. The territory is practically agricultural, with long stretches of sandy unproductive soil.

The berry rate from Elm to Jersey City is 52.5 cents per 100 pounds, carload and less than carload, and includes the return of empty crates. The same rate applies to Jersey City from all points between Elm and Bay Side. The carload rate on peaches from Elm to Jersey City is 21 cents per hundred pounds; less than carload, 31.5 cents per hundred pounds. This rate does not include return of empty crates. The carload rate on empty crates is 11.6 cents per hundred pounds; less than carload, 42 cents per hundred pounds.

Berry crates contain 32 quarts of strawberries, and are estimated at 50 pounds per crate, actual weight 60 pounds. Taking the actual weight as the basis of calculation, the rate of 52.5 cents would be reduced to 43.75 cents per hundred pounds, which is further reduced by the cost of returning the empty crates. Raspberries, blackberries and dewberries weigh less than strawberries. The average loading per car of berries is 250 crates, peaches 600 crates.

Berries are among the principal products of the southern portion of the state, and owing to the gradual increase in production and the demands of the trade, improved facili-

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ties from time to time became necessary for the proper and prompt handling of the business. To protect the berries in transit and insure their arrival at destination in marketable condition, refrigerator and ventilator cars are provided. Refrigerator cars are used for shipments outside of the State; ventilator cars within the State, with occasional refrigerator car movements to Jersey City. These cars are rented from the respondent company and foreign lines for the berry season, covering a period of about three months; and are put in condition and distributed at the several stations prior to the berry movement.

The requirements of the berry trade necessitating fast service to afford shippers the advantage of the early market, a special train known as the "berry train" is scheduled, leaving Bay Side district in the early afternoon, Elm at 6:45 p. m., arriving at Jersey City about 11:30 p. m. No scheduled stop is made between Elm and Jersey City. The average time of this train is six minutes less than passenger service, and less than one-third of the ordinary freight train movement.

In addition to this special service, provision is made at the Jersey City Terminal for delivery tracks to place berry cars immediately upon arrival. Additional facilities are also provided at shipping points. To expedite the handling of berries, a large force of extra clerks is maintained at Jersey City to way-bill and check deliveries; inspectors and additional men are employed at the heavy shipping points, and also at Jersey City to load the empty berry crates. Additional ferry boat service is afforded between Jersey City and New York during the hours of delivery. As the value of berries declines rapidly after the first market, the special service is absolutely essential to insure shippers the greatest profits.

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Taking the earnings and expenses for the year 1915 as an average, the ratio of total operating expenses to total transportation revenue on the New Jersey Southern Division was 112.40 per cent. As the total revenue from all sources is insufficient to meet operating expenses, the question arises whether the berry rate is excessive compared with rates on other commodities and is consequently carrying more than a proper proportion of the apparent deficit. The respondent company claims it is justified in maintaining the present rate for a service requiring special facilities and an expedited movement not necessary for the transportation of products in regular trains.

The berry trade demands fast service, and as it is afforded by the company, providing every facility for such movement, earnings commensurate with the cost of such service must be forthcoming to assure its continuance. It is stated that a delay of two hours in the early market results in a loss of from 60 cents to \$1.00 per crate. Quick service apparently is the life of the berry trade; a slight diminution in such service represents a serious loss.

From the testimony, it appears that shippers at Maurice-town, Fairton, Bridgeton, and Vineland, points south of Elm, are evidently satisfied with the rate and are not in sympathy with the request for a reduction on account of the importance and value of maintaining prompt and quick service.

The argument that evidently convinces the complainants of the reasonableness of their contention is apparently based on the conclusion that as other products are carried in berry trains, at lower rates, there should be a reduction in the berry rate. If such reasoning is considered conclusive and should apply to all commodities carried in berry trains, it would mean the adoption of a principle which in no sense can govern the rate situation. The special train is primarily

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for the movement of berries, necessitating the maintenance of an ample car supply at each loading station. Other less perishable products could be carried in slower service. The rates, therefore, are not comparable with the berry rate. Unoccupied space in berry cars represents an economic waste if not availed of for transporting other products. As berries are not shipped in sufficient quantities in all cases for capacity loading, and other products are carried to fill out the loading, it does not follow that all commodities contained in a train should be transported at the same rate.

From statements of railroad revenue and market value of berries and peaches, it appears that the average earnings per car of berries is about \$10 more than peaches and the average value of berries is \$1.60 per crate, peaches 36 cents per crate. Two crates of peaches occupy practically the car space of one crate of berries, and the value of two peach crates is somewhat less than half the value of one crate of berries.

The peach rate in the southern section of the state was fixed at a time when peaches were moved in quantities in the middle section of the state, and to foster the development of peaches in the southern section a rate was named to permit the growers to compete in the northern markets.

The facts that berries being the more valuable commodity, the ratio of risk in transportation is considerably greater, that special facilities and fast service are required by the trade, that there are expenses due to returning empty crates, empty return movement of ventilator cars, and that a large force of additional help is necessitated by the traffic, must be considered in the construction of the berry rate. It, therefore, does not appear inconsistent that berries should assume a higher rate than peaches.

In the case of the Farmers' Transportation Association, Inc., vs. Pennsylvania Railroad Company, this Board has

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already decided where a train is run because of some exceptional conditions which the facilities regularly provided by the railroad do not meet, it would not be reasonable to expect the railroad company to meet it without extra compensation.

The complainants have submitted a comparison of rates intending to show that the present rate is unreasonable. Among these is a rate on berries of 58 cents per 100 pounds from Salisbury, Md., to Jersey City, a distance of 224.4 miles, 5.5 cents higher than the rate from Elm to Jersey City, a distance of 103 miles. This comparison of itself does not establish the unreasonableness of the rate from Elm to Jersey City, for it is apparent that the freight rate would have to be equalized, regardless of distance if the Salisbury shippers are to compete in the New Jersey markets.

In the statement of comparisons is shown a less than carload rate of 37.8 cents per hundred pounds from Germantown to New York, a distance of 103.67 miles; also less than carload rate of 39.5 cents per 100 pounds, Oswego to Rochester, a distance of 60.79 miles. The Oswego-Rochester distance is practically half the Germantown-New York distance, and the rate higher. Such comparisons show a non-uniformity of rates, which no doubt develops through exceptional operating conditions.

The per ton mile earnings of the Southern Division is the lowest on the lines controlled by the respondent company, which undoubtedly results from a large mileage in proportion to the tonnage throughout a sparsely populated territory without manufacturing centers. The territory being practically an agricultural community, it is from this class of products the greater portion of earnings is derived.

To support complainant's comparison of rates, no testimony was produced showing similarity of operating condi-

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tions and volume of traffic on the lines of the companies mentioned and the respondent company. To sustain allegations that a specific rate is unreasonable and discriminatory, partial proofs at least should be in evidence, as the burden rests with the complainant to show a foundation for such contention. In *Acme Cement Plaster Company vs. Lake Shore & Michigan Southern Railway Company*, Vol. 17—I. C. C. R. p. 30, is stated.

"It is a matter of common knowledge that freight rates are controlled by various and varying conditions, and therefore the rates established in one section furnish no reliable standard by which to measure the reasonableness of rates in another section where dissimilar conditions prevail.

Since 1902, the berry rate has been 50 cents per 100 pounds, which was increased 5 per cent under the general advance in freight rates. During this period of fourteen years, the berry output has increased, and the conclusion that the rate is unreasonable and more than the traffic can properly bear is evidently without foundation, considering its long existence and the development of the berry industry.

As the necessity of grouping rates over a large area exists under certain circumstances, and is permissible if illegal results cannot be shown to flow from it, it would seem reasonable to conclude that the freight rate on any specific commodity should be equalized throughout the zone of production, if by any such equalization an industry covering a large territory will be fostered. Otherwise, shippers at points nearest the markets would have the advantage over shippers at the more distant points, which might prohibit them, through disadvantage of location, from competing in the common markets. If equality of conditions cannot be maintained, a direct loss in earning power may result.

Any interference with an existing industrial condition that would tend to retard development and result in de-

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creased tonnage on a railroad whose total revenue is not sufficient to meet expenses would not seem warranted.

An attempt to change the rate situation by graduating rates on a zone or mileage basis from points south of Elm to Jersey City would undoubtedly tend to centralize the berry industry. If rates were fixed on such basis, with the earliest closing hour for loading at the most southerly end of the berry district, shippers in this district would pay the highest freight rates, coupled with the disadvantages of earliest loading. Such shipments would be the earliest picked and longest en route, and as berries quickly deteriorate their condition upon arrival might materially affect their value.

To disturb the present rate and service would in all probability seriously affect the berry industry, and any revision or adjustment would lead to conditions not satisfactory to shippers in the berry zone.

Upon consideration of all the facts presented, the Board finds that the record does not show that the existing rate is unreasonable or unjustly discriminatory, and the complaint accordingly will be DISMISSED.

Dated May 9th, 1916.

ORDER.

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof,

It is ORDERED that the complaint in this proceeding be and it is HEREBY DISMISSED.

Dated May 9th, 1916.

Grade Crossings—Stone Harbor—W. J. and S. R., R.

No. 355.

IN THE MATTER OF THE PETITION OF THE BOROUGH OF STONE HARBOR FOR ADDITIONAL CROSSINGS AT GRADE OVER THE TRACK OF THE WEST JERSEY AND SEASHORE RAILROAD.

The construction of new crossings at grade at Ninety-third Street, Ninety-ninth Street, One Hundred and Fourth Street and One Hundred and Seventh Street, in the Borough of Stone Harbor approved.

Lewis T. Stevens, for the Borough.

James Buckelew, for the Railroad Company.

The Borough of Stone Harbor filed a petition asking for additional grade crossings at Ninety-second Street, Ninety-fourth Street, Ninety-ninth Street, One Hundred and First Street, One Hundred and Fourth Street, One Hundred and Fifth Street and One Hundred and Seventh Street in said Borough. The petition was subsequently amended asking for a grade crossing at Ninety-third Street instead of Ninety-second and Ninety-fourth Streets. There already exist grade crossings in the Borough at Eighty-third, Eighty-fifth, Eighty-eighth and Ninety-sixth Streets. The distance between streets as shown on plan of the Borough is 220 feet and the plan shows opened streets between Eightieth and One Hundred and Seventh Streets, although as a matter of fact there are no grade crossings at present south of Ninety-sixth Street, which highway is practically the center of the Borough.

The section of the Borough on the westerly side of the railroad tracks, which includes the business section, is developed to a greater extent than the easterly side. Vehicular travel from points south of Ninety-sixth Street, to reach the opposite side of the track between Ninety-sixth Street

Grade Crossings—Stone Harbor—W. J. and S. R. R.

and One Hundred and Seventh Street, must cross at Ninety-sixth Street. This condition interferes materially with the development of this section of the Borough. The railroad track runs north and south and occupies what appears to be the center of Second Avenue. A portion of said avenue on both sides of the track is used for highway travel. Large sums of money have been and are being expended to improve the ocean front in the Borough. A number of new buildings are under construction. The continuance of Stone Harbor as a summer resort and its future development will depend largely upon the facilities to reach the beach and the means afforded to permit vehicular travel to pass from the westerly side of the Borough to the easterly side without traveling an unusual and unwarranted distance to reach a railroad crossing. From the residential portion along the Great Channel and the sections of the several inland bays, south of Ninety-sixth Street, to the ocean front is a considerable distance and more convenient access to the beach should be provided.

Passenger trains start at Ninety-sixth Street, at which the railroad station is located; but few switching movements are necessary south of this point and the view of the tracks in both directions is practically unobstructed.

A crossing at Ninety-third Street will conveniently divide the section between the existing crossings at Ninety-sixth and Eighty-eighth Streets; and crossings at Ninety-ninth Street and One Hundred and Fourth Street will afford direct routes of travel to the beach from Pleasure Bay, Carnival Bay and Stone Harbor Bay section of the Borough. A crossing at One Hundred and Seventh Street would meet the plan of general development in that vicinity.

We find and determine that crossings at grade should be established and maintained at Ninety-third Street, Ninety-ninth Street, One Hundred and Fourth Street and One Hun-

Grade Crossings—Stone Harbor—W. J. and S. R. R.

dred and Seventh Street, and approve the construction of the same, the said crossings to be planked and the standard grade crossing signs erected at the approaches thereto.

An order will be made to that effect.

Dated May 16th, 1916.

ORDER.

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

It is HEREBY ORDERED that the construction of Ninety-third Street, Ninety-ninth Street, One Hundred and Fourth Street and One Hundred and Seventh Street, across the tracks of the West Jersey and Seashore Railroad Company, at grade, be and the same is hereby approved by this Board, and permission to construct said crossings is hereby given, the said crossings to be planked by the West Jersey and Seashore Railroad Company and the same to be marked by standard crossing signs.

This order shall become effective June 8th, 1916.

Dated May 16th, 1916.

Discontinuance Passenger Station—Leonards—W. J. and S. R. R.

No. 356.

IN THE MATTER OF THE APPLICATION OF WEST JERSEY AND SEASHORE RAILROAD COMPANY FOR PERMISSION TO DISCONTINUE PASSENGER STATION AT LEONARDS.

Where there is little use of a station, and the advantage to be derived from its discontinuance far outweighs, as in this case, slight inconvenience to a few persons, permission for such discontinuance will be granted.

Application is made for permission to abandon Leonards Station on the Pennsgrove Branch of the West Jersey and Seashore Railroad Company.

Leonards is a non-agency station, seven-tenths of a mile southward from Thorofare Station, and nine-tenths of a mile northward from Paradise Station. The company desires to do all of the business at Leonards through Thorofare Station, where it claims the business is not sufficient to warrant an agent for Thorofare business only, but where an agent will be installed if Leonards business is combined with its present business.

A count of passengers getting on and off trains at Thorofare shows that fifteen is the greatest number getting on any train during a whole week, or an average of two and a fraction passengers per day, and that nineteen is the greatest number getting off any train for a week, or an average of less than three passengers per day. On some trains only one passenger got on during the entire week, and others show as few as one passenger alighting during the entire week. Other trains had no passengers getting on or off, as the case was, during the entire week. During the entire week, twenty-three trains per day showed an average of twelve passengers getting on, or an average of one-half passenger per train per day, and nine and a half passengers getting off, or an average of about one-third pas-

Discontinuance Passenger Station—Leonards—W. J. and S. R. R.

senger per train per day. There was one instance of more than three passengers getting off and on a train, and when any passengers boarded or alighted, it was usually one or two, and occasionally three.

The citizens of Thorofare urge the change and are very desirous of securing the advantage to be derived from the presence of an agent. One user of the Leonards Station appeared in opposition to the proposed change. He was one of the few daily commuters from the station.

The Board is reluctant to sanction the withdrawal of any conveniences enjoyed by the public but where it appears that there is little use of a station and that few persons would be inconvenienced, and the advantage to be derived far outweighs, as in this case, the slight inconvenience to a few persons, we feel constrained to grant the permission asked for.

The size of trains now being operated on this branch is an additional reason for reducing the number of stops as much as can be done with fairness to the public.

It was suggested that the station be moved southward toward Leonards, but residents of Thorofare and the residents of Leonards, as well as the representative of the company urged that it remain at the present location. They all thought it was better located with respect to the territory to be served therefrom.

We will, therefore, permit it to remain at its present location, until it is ascertained if any change is desirable under the new conditions.

The Board will permit the abandonment of Leonards Station in accordance with the petition.

Due notice of the change and of the presence of an agent for the transaction of freight and passenger business at Thorofare should be given.

Dated May 24th, 1916.

Haddon Twp. Committee *vs.* General Water Supply Co.

No. 357.

TOWNSHIP COMMITTEE OF HADDON TOWNSHIP

VS.

THE GENERAL WATER SUPPLY COMPANY.

The Board finds that the General Water Supply Company should establish, construct and maintain an extension of its existing facilities.

Walter S. Keown, for Haddon Township.

T. Yorke Smith, for the Company.

The complainant in this proceeding alleges that the General Water Supply Company has refused to install a hydrant at the corner of Denver and East Melrose Avenues in what is known as Westmont, and to arrange its distribution system so as to furnish other hydrants when needed.

It appears that the company's refusal to install the hydrant was based upon the fact that the water mains in Westmont are not of sufficient size to enable it to furnish adequate service for fire purposes. It was brought out at the hearing which took place at the Court House in Camden on May 18th, 1916, that the mains in Windsor, Albany, Denver, East Emerald and East Melrose Avenues, were laid at the expense of those interested in land development and that the company had not contributed to the expenses of laying said mains. It was further brought out, that the annual revenue received from the customers connected to these mains at the present time amounts to two hundred one dollars (\$201.00). It was also shown that two additional houses are to be erected which would bring to the company additional revenue of twenty-four dollars (\$24.00)

Haddon Twp. Committee vs. General Water Supply Co.

per annum, in addition to which there will be the revenue from whatever hydrants may be installed as a result of the complaint of the Township Committee.

The main now in place on Maple Avenue is sufficiently large for present purposes and in order to furnish hydrant service at the corner of East Melrose and Denver Avenues, it will be necessary to replace the two-inch pipes on Windsor Avenue to Albany Avenue, on Albany Avenue from Windsor to Denver Avenues, on Denver Avenue to East Melrose Avenue. At the present time the two inch mains in the other streets appear to be sufficiently large. This will involve the installation of 1,500 feet of six inch pipe at an approximate cost of \$1,200.

One hydrant is located at present on the corner of Windsor Avenue and Maple Avenue and the distance from that hydrant to the proposed location at the corner of Denver and East Melrose Avenues is 1,500 feet, which is too great a distance between hydrants. The Board is of opinion that there should be another hydrant located somewhere near the corner of Denver and Albany Avenues. This will involve the installation of a second hydrant and the Township Committee's complaint indicated that more than one hydrant might be required. The total revenue from the mains as laid in Westmont will then be as follows:

Present revenue	\$201
Two new houses	24
Two new hydrants	50
<hr/>	
Total	\$275

This amounts to more than eighteen cents per lineal foot and in the Board's opinion, under the circumstances involved in this case, including the fact that the original mains were installed at no cost to the company, the improvements asked for by the Township Committee ought to be installed.

Haddon Twp. Committee *vs.* General Water Supply Co.

The Board, therefore, finds that the General Water Supply Company should establish, construct and maintain an extension of its existing facilities by installing six inch mains with the necessary valves and specials from the intersection of Maple Avenue through Windsor Avenue to Albany Avenue; thence through Albany Avenue to Denver Avenue; thence in Denver Avenue to East Melrose Avenue, and by installing two hydrants, one located near the intersection of Albany Avenue and Denver Avenue and one near the intersection of Denver Avenue and East Melrose Avenue, the charge to be made by the company for each hydrant to be the company's regular charge of \$25.00 per hydrant per annum.

In the judgment of the Board such extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same, and the financial condition of said company reasonably warrants the original expenditure required in making and operating such extension.

Dated June 1st, 1916.

ORDER.

This case being at issue, upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof,

The Board of Public Utility Commissioners HEREBY ORDERS the General Water Supply Company to install six inch mains, with the necessary valves and specials from the intersection of Maple Avenue through Windsor Avenue to Albany Avenue; thence through Albany Avenue to Denver

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Avenue; thence in Denver Avenue to East Melrose Avenue; and to install two hydrants, one to be located near the intersection of Albany Avenue and Denver Avenue, the other near the intersection of Denver Avenue and East Melrose Avenue.

This Order shall become effective June 24th, 1916.

Dated June 1st, 1916.

No. 358.

BOROUGH OF GLEN ROCK, ET AL.,

VS.

THE BERGEN AQUEDUCT COMPANY FOR REFUSAL TO SUPPLY
WATER FOR PUBLIC AND PRIVATE USE.

ORDER DISMISSING PETITION.

A petition having been filed by the respondent Bergen Aqueduct Company, praying that the order of this Board, made February 23, 1915, be set aside and the original petition herein be dismissed, from which it appears that the matters in controversy have been settled by the granting of a consent to lay pipes in the Borough of Glen Rock, to a corporation known as Glen Rock Water Works, Inc., which consent was approved by this Board by its order made October 29, 1915, and that said corporation has acquired the plant of the respondent situate in said Borough of Glen Rock and has undertaken to carry out the terms of said consent and comply with the duties imposed upon it thereby to make extensions when requested according to the terms of said ordinance:

The Board of Public Utility Commissioners HEREBY ORDERS that its order dated February 23, 1915, be set aside and the petition herein be dismissed.

Dated June 6th, 1916.

James E. Brodhead vs. New Jersey Telephone Co.

No. 359.

JAMES E. BRODHEAD

VS. .

NEW JERSEY TELEPHONE COMPANY.

REPORT AND ORDER.

James E. Brodhead, in person.

E. W. Sutton, for the company.

The complainant in this proceeding alleges that he has applied to the New Jersey Telephone Company for individual party line service at his residence in Flemington and has been unable to obtain the same. The company admits that it has refused to supply the service desired by the petitioner. On the issue joined hearing was held of which the New Jersey Telephone Company was given notice and at which it was represented. The Board of Public Utility Commissioners after such hearing

FINDS AND DETERMINES that it is the duty of the New Jersey Telephone Company to supply to James E. Brodhead at his residence at Flemington, New Jersey, individual party line service; to install at such residence a telephone, and to connect such telephone to its lines. The Board

FURTHER FINDS AND DETERMINES that in refusing to do this the New Jersey Telephone Company fails to furnish adequate and proper service and to keep and maintain its property and equipment in such condition as will enable it to do so. The Board of Public Utility Commissioners

HEREBY ORDERS the New Jersey Telephone Company to install a telephone at the residence of James E. Brodhead

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Middlesex County.

at Flemington, New Jersey, to connect said telephone to its lines and to supply the said James E. Brodhead with individual party line service at the rate charged its other subscribers in Flemington for such service.

This order shall become effective June 29th, 1916.

Dated June 6th, 1916.

No. 360.

IN THE MATTER OF REHEARING OF APPLICATION OF NEW YORK
TELEPHONE COMPANY FOR APPROVAL OF A RESOLUTION
GRANTED BY THE BOARD OF CHOSEN FREEHOLDERS OF MID-
DLESEX COUNTY, NEW JERSEY.

H. G. Hale, for the petitioner.

L. Edward Herrmann and *Grover C. Richman*, for the Board.

In a report bearing date the eighteenth day of April, 1916, the Board announced its conclusions following a hearing and argument of this matter and an order was entered in accordance therewith.

Afterwards application was made to the Board by the petitioner for a rehearing of the application. The application was granted and notice thereof given.

The rehearing was held at Trenton, on May 16th, 1916. The petitioner appeared, the order heretofore entered was opened, further testimony was produced, and argument heard.

The Board has since duly considered the matter and concludes that its findings and determinations as stated in the report of April eighteenth, 1916, herein referred to, are

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final, and has nothing to add thereto except that as to the resolutions alleged to have been filed by the petitioner (testimony p. 13) this Board states that if the resolutions approved in fact effected original grants of franchises, such orders were mistakenly made, the original nature of the grants not having been called to the attention of the Board. Such orders were made upon the assumption that the resolutions were confirmatory and affected highways over which the municipalities in which such highways were located had jurisdiction and from which municipalities the grants had been or must be obtained, the County having, however, certain limited powers therein.

The Board will, therefore, enter an order dismissing the application.

Dated June 6th, 1916.

ORDER.

This application having been duly made the subject of rehearing, and the Board having, on the date hereof, made and filed a report which said report containing the Board's conclusions after rehearing is hereby referred to and made a part hereof, the Board's approval is withheld and the application is **HEREBY DISMISSED.**

Dated June 6th, 1916.

Woodbury vs. W. J. and S. R. R.

No. 361.

TOWN OF WOODBURY

VS.

THE WEST JERSEY AND SEASHORE RAILROAD COMPANY.

It appears that Edith Street, a public highway in the City of Woodbury, and the tracks of the West Jersey and Seashore Railroad Company cross one another at the same level, and that conditions at such grade crossing make it necessary for a flagman to be stationed thereat each day in the week between the hours of seven o'clock a. m. and seven o'clock p. m.

C. T. Mansfield, for the Town of Woodbury.

T. J. Skillman, for the railroad company.

The City of Woodbury complained to the Board alleging insufficient protection at the crossing of Edith Street and the tracks of the West Jersey and Seashore Railroad in the said city.

The complaint was referred to the Board's inspector who recommended in a report to the Board "that the crossing should be protected by flagman from 7:00 o'clock a. m. to 7:00 o'clock p. m." A copy of the report and recommendation was sent to the West Jersey and Seashore Railroad Company which was asked to advise the Board as to its position on the same. The company in a communication to the Board claimed that the traffic over the crossing would not warrant placing a watchman there.

On the issue thus joined, a hearing was held at which the City of Woodbury and the West Jersey and Seashore Railroad Company were represented.

The company submitted a statement of traffic at the crossing on August 28th, 29th and 30th, 1915. The average num-

Woodbury vs. W. J. and S. R. R.

ber of pedestrians each day who cross the tracks at this place, including persons desiring to board trains is between 450 and 500. On August 28th, 16 automobiles, 24 bicycles and 51 trains passed over this crossing. On the other two days the amount of vehicular traffic was smaller. It was testified by the Inspector of the Board who investigated the situation that on one side of the tracks the view in one direction was limited to 200 feet. The number of passenger trains passing each day is about 150 and at least one express train goes through at high speed in the late afternoon at an hour when a considerable number of people cross.

It appears to the Board that Edith Street, a public highway in the City of Woodbury and the track of the West Jersey and Seashore Railroad Company cross one another at the same level, and that conditions at such grade crossing make it necessary for the protection of the traveling public at such grade crossing that a flagman shall be stationed thereat each day in the week between the hours of seven o'clock a. m. and seven o'clock p. m.

An Order will so enter.

Dated June 27th, 1916.

ORDER.

This case having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof,

The Board of Public Utility Commissioners, after hearing on notice,

HEREBY ORDERS the West Jersey and Seashore Railroad Company to keep stationed at the crossing of its tracks and of Edith Street, in the Town of Woodbury, a flagman be-

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tween the hours of seven a. m. and seven p. m., each day of the week, to give warning at said crossing of the approach of trains thereto.

This Order shall become effective July 19th, 1916.

Dated June 27th, 1916.

No. 362.

EBERT BROTHERS

VS.

WEST JERSEY AND SEASHORE RAILROAD COMPANY.

The Board finds that the railroad of the West Jersey and Seashore Railroad Company intercepts the land of Ebert Brothers, and that it is the duty of the said West Jersey and Seashore Railroad Company to provide and keep in repair a suitable and convenient wagonway across said railroad.

W. C. Marshall, for complainant.

Alan H. Strong, for respondent.

Complaint is made by Ebert Brothers that the West Jersey and Seashore Railroad Company has closed a crossing on the property of said Ebert Brothers. It is alleged that the crossing has been in existence since the railroad was built. This complaint was referred to the Board's Inspector, who reported under date of April 28, 1916, that "it appears from an investigation of the records of ownership of land on the easterly and westerly sides of the right of way of the railroad company that the right of complainant still exists in the private road crossing recently closed by the company. The company, recognizing such right, has in-

Ebert Brothers vs. W. J. and S. R. R.

formed me that the crossing will be re-opened for complainant's use only." A copy of this report was sent to the railroad company. Subsequently Ebert Brothers wrote to the Board stating that "writer has called on Mr. Buckalew, Superintendent of the West Jersey & Seashore Railroad several times and each time he says he will put crossing back whenever we want it, and writer has said each time that 'we want it put back right away,' but still *they do nothing* in the matter. We have written them several times and they pay no attention whatever to letters."

A copy of this letter was forwarded on May 10, 1916, to the West Jersey and Seashore Railroad Company. The said company in a letter dated May 20th, signed by C. S. Krick, General Superintendent, stated—"I beg to say that the report of your Inspector, Mr. Maybury, dated April 28, 1916, is substantially correct with regard to the position of our company in the matter, and our Superintendent, Mr. Buckalew, has told Mr. Ebert that our company will open the crossing whenever he (Mr. Ebert) has use for it."

A copy of this letter was forwarded to Ebert Brothers. Under date of June 12th Ebert Brothers wrote to the Board stating "we have exhausted our best efforts to get the W. J. & S. R. R. Co. to put back our *private crossing* which they took out last January, but to no avail." In answer to this communication from Ebert Brothers the Board wrote the said Ebert Brothers informing them that the railroad company had advised the Board that it would re-open the crossing for their use only. In this communication to Ebert Brothers it was stated: "Do you claim that you are willing that the crossing should be restricted to your use only and that the railroad company refuses to open the crossing for your exclusive use notwithstanding the expression of its willingness to do this? If so, the Board will place the matter on its calendar for hearing." In response to this letter

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Ebert Brothers wrote to the Board stating: "We are only asking for our *private crossing* to be replaced." Upon receipt of this letter the Board placed the matter on its calendar for a hearing to be held in the City of Camden on Monday, June 26th. Notices of this hearing were sent to Ebert Brothers and to the West Jersey and Seashore Railroad Company, and hearing was held at which both parties were represented. Testimony was submitted at the hearing to the effect that the crossing had been in use for approximately fifty years; that Ebert Brothers are owners of the land on both sides of the railroad; that the crossing is not required for public use, but for the use of Ebert Brothers in carting from one part of their land to another. The company agreed that a private crossing should be maintained.

It appears to the Board after hearing, and the Board finds and determines that the railroad of the West Jersey and Seashore Railroad Company intercepts the land of Ebert Brothers, and that it is the duty of the said West Jersey and Seashore Railroad Company to provide and keep in repair a suitable and convenient wagonway across said railroad.

The Board further finds and determines that such wagonway was previously constructed and maintained, and that the closing of said wagonway by the West Jersey and Seashore Railroad Company was unwarranted, and it is the judgment of the Board that the same should be re-opened for the use of Ebert Brothers. An order to this effect will issue.

Dated June 29th, 1916.

ORDER.

This case having been duly heard and submitted by the parties, and full investigation of the matters and things in-

In re Bonds and Mortgage—Lambertville Public Service Co.

volved having been had, and the Commission having on the date hereof made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

The Board of Public Utility Commissioners after hearing, upon notice, HEREBY ORDERS the West Jersey and Seashore Railroad Company to re-open the wagonway closed by it on the land of Ebert Brothers between Ashland and Osage Stations, and to keep and maintain such wagonway.

This order shall become effective July 21, 1916.

Dated June 29th, 1916.

No. 363.

IN THE MATTER OF THE APPLICATION OF THE LAMBERTVILLE
PUBLIC SERVICE COMPANY FOR APPROVAL OF MORTGAGE
AND ISSUE OF \$170,000 BONDS.

Because of the relation between the value of the plant and the total securities and because of the further fact that the approval of this application would increase an already great discrepancy in the relationship between the amounts of stock and bonds outstanding, the Board holds that before additional bonds are issued the property should be put in good order and additions costing at least \$25,000, which should come entirely from the sale of stock, should be made.

W. Holt Apgar, for the company.

The petition in this matter was heard by the Board at its meeting in Jersey City on Wednesday, July 5th, at which time testimony was submitted showing the present condition of the company and the need for additions and extensions to its plant and system.

In re Bonds and Mortgage—Lambertville Public Service Co.

It appears from the testimony that the Lambertville Public Service Company was organized to take over the property of the Lambertville Heat, Light and Power Company, this having taken place a few months since. The Lambertville Public Service Company, in taking over the property referred to, issued its own stock in the amount of \$5,000 and assumed an existing mortgage amounting to \$80,000.

The petition by the company asks for the approval of a mortgage in the amount of \$850,000 and the issuance of bonds thereunder for four specific purposes.

First, \$90,000 face value of new bonds to be issued at about 90 to provide funds to pay the principal due on \$80,000 face value of the Lambertville Heat, Light & Power Company bonds now outstanding at 105.

Second, \$11,000 face value at 90 to provide for the payment of interest due on said \$80,000 of Lambertville Heat, Light & Power Company bonds from April first, 1914, to October first, 1916. This item provides for redemption on October first, 1916, and would be reduced proportionately by redemption at an earlier date.

Third, \$35,000 face value of new bonds at 90 to provide funds to make the improvements and additions enumerated in Schedule A.

Fourth, \$34,000 face value bonds at 90 to provide funds for the building of Stockton and Titusville extensions and the additions to the generating system as set forth in Schedule B.

The plant and system of the Lambertville Company is quite old, having been built originally by the Hunterdon Electric Company in 1894 or 1895. The Lambertville Heat, Light and Power Company was organized in 1904 to take over this property which it did through the issuance of its own bonds.

In re Bonds and Mortgage—Lambertville Public Service Co.

In connection with a proposed stock issue, the property was appraised by the Board's engineers in 1912 at about \$76,000 at which time there was, undoubtedly, a large amount of accrued depreciation. Since 1912 the depreciation has materially increased, although there may have been some additions to the system which might, to some extent, offset the additional depreciation. There is testimony, however, to the effect that the machinery of the plant is in a very much run-down condition and in need of extensive replacements; in fact, a study of the items in the application now before the Board indicates this. Among the items found in Schedule A a number are clearly chargeable to replacement account. These amount to at least the sum of \$7,118.50. The balance of the items in Schedule A are for actual additions to the existing plant, but the installations of the new work will undoubtedly result in the retirement of some of the old machinery now in use.

The estimates in Schedule B are not in sufficient detail to admit of criticism, but with the present prices of labor and material the amounts called for are probably necessary in making extensions into new territory.

The Board cannot approve the issuance of the bonds called for in the second item. To do so would be, clearly, in contravention of the Law of 1906 regulating the issue of stocks and bonds by public utility companies.

Because of the relation between the value of the plant and the total securities and because of the further fact that the approval of the application would increase the already great discrepancy in the relationship between the amounts of stock and bonds outstanding, it is the opinion of the Board that before additional bonds are issued the property should be put in good order and additions made to it to the extent of at least \$25,000, which should come entirely from the sale of stock.

In re rates—Delaware River Water Co.

The amount of bonds now outstanding is excessive when considered in connection with the amount of stock now outstanding. The Board will give consideration to a petition for the approval of capital stock in the proper amount to pay for extensions and additions to the existing plant and system when the company is in a position to show that additions to the value of at least \$25,000 have been made to the plant and have been paid for from the proceeds of capital stock. Consideration may then be given by the Board to the creation of a new mortgage and the issuance of bonds thereunder.

For the reasons given above, the petition will be denied. An Order will so enter.

Dated July 10th, 1916.

ORDER.

This application having been duly heard and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board's approval of this petition is withheld and the application is HEREBY DISMISSED.

Dated July 10th, 1916.

No. 364.

IN THE MATTER OF THE APPLICATION OF THE DELAWARE RIVER
WATER COMPANY FOR APPROVAL OF PROPOSED INCREASE
IN RATES.

In this proceeding there is involved consideration of a minimum rate for water supplied through one inch and larger taps. The testimony

In re rates—Delaware River Water Co.

shows that a number of those supplied with water use the same for irrigation, fire protection or other purposes which involve a large use at certain periods and no use at all at other periods. The result of this is to impose upon the company certain fixed charges which would justify a higher minimum.

The Board finds the rate proposed by the Company too high and fixes as reasonable a schedule of "Stand by" charges.

William C. Jones, for the company.

H. O. Nelson and Frederick R. Green, for the Wall Rope Company, objectors.

On February 1st, 1916, the Delaware River Water Company sent to the Board a communication which contained the following:

"In addition to rates already filed with you for furnishing a supply of water for residence and domestic purposes, we desire to file with you a factory or quantity rate to be supplied by meter only through the medium of a 1" tap or larger as follows:

1"	minimum	monthly	rate.....	\$ 4.00
2"	"	"	"	16.00
3"	"	"	"	36.00
4"	"	"	"	64.00
6"	"	"	"	144.00

"Rates for service under this minimum will be calculated at 15¢ per one thousand gallons and at that rate for any excess above the minimum; minimum to be payable monthly in advance. Under the foregoing rate no service connection will be made except under contract for a period of three years or more."

Following the filing of the rate the Board directed the company to notify all customers who would be affected by the new schedule of a hearing to be held by the Board on the proposed change. At the hearing so held, affidavit was submitted showing that the secretary of the water company had notified each of the said customers, fifteen in number, of said hearing.

In re rates—Delaware River Water Co.

Protest was made by the Wall Rope Works to the effect that the change to it would result in an increase from \$550 to \$1,728 per annum, or “an additional charge of nearly \$1,200.” At the hearing testimony was submitted showing the result to each of the customers who would be affected by the proposed new schedule of minimum charges. From the testimony it appears that a number of the customers use water for irrigation, fire protection, or other purposes which involve a large use at certain periods and no use at all at other periods, the result being to impose upon the company certain fixed charges which, in its opinion, justify a much larger minimum charge. From the testimony, however, it is apparent that the proposed minimum charges would very materially increase the charges to certain of the customers and it was suggested informally by the Board’s Engineer that a schedule be filed providing for a lower schedule of minimum charges. Following this suggestion, the company filed a schedule providing for a demand charge plus a charge for all water consumed. The schedule of demand charges referred to by the company as “Standby Charge” is as follows:

1" tap.....	\$ 2.00	per month
2" "	8.00	" "
3" "	18.00	" "
4" "	40.00	" "
6" "	60.00	" "

in addition to which, as stated, all water would be charged for in accordance with a sliding schedule of rates.

The results of the application of this schedule were tabulated and charted and in addition some calculations have been made, based on the relative capacities of meters.

In order that the schedule of rates may be uniform we begin with the 1½" meter in the following table, showing the

In re rates—Delaware River Water Co.

relative capacities of meters in ratio to the $\frac{1}{2}$ " meter, taken as unity:

$\frac{1}{2}$ " or $\frac{5}{8}$ " meter capacity taken as	1.0
$\frac{3}{4}$ "	" 1.8
1"	" 3.6
2"	" 12.0
3"	" 30.0
4"	" 42.0
6"	" 80.0

The experience of the Delaware River Water Company, being based principally on flat rates, gives no data upon which to predicate the cost of each capacity unit for a standby charge without any water. But it appears that \$6.00 per capacity unit will be fair and reasonable. The schedule of standby charges on this basis would be as follows:

$\frac{1}{2}$ " or $\frac{5}{8}$ " meter	\$ 6.00	per annum	
$\frac{3}{4}$ "	" 10.80	" "	
1"	" 21.60	" "	instead of \$ 24 as last proposed
2"	" 72.00	" "	instead of 96 as last proposed
3"	" 180.00	" "	instead of 216 as last proposed
4"	" 252.00	" "	instead of 480 as last proposed
6"	" 480.00	" "	instead of 720 as last proposed

These charges include NO WATER.

From the evidence submitted, as to the actual bills rendered heretofore, it would appear that the last mentioned schedule would eliminate practically all the reasonable objections made by the protestants in this case. The schedule made up by reference to relative capacities of meters is, in the Board's opinion, consistent and bears a nearer relation to the readiness to serve costs and therefore should be substituted for the one which the company has recently filed. This method of charging will assure to the company payment for the necessary costs without imposing an undue burden on any individual customer. Upon the filing with

 In re rates—Delaware River Water Co.

the Board of the following schedule, which the Board considers fair under all the circumstances, it may be allowed to become effective for the next billing period following the filing of the same.

The schedule referred to as a whole, arranged for monthly billing is as follows:

FIRST: A demand (or standby) charge, determined by size of meter:

1" meter	\$ 1.80	per month	with no water					
2" "	6.00	" "	" "	" "	" "	" "	" "	" "
3" "	15.00	" "	" "	" "	" "	" "	" "	" "
4" "	21.00	" "	" "	" "	" "	" "	" "	" "
6" "	40.00	" "	" "	" "	" "	" "	" "	" "

In addition to the above fixed demand or standby charge, water actually consumed is to be charged to all customers uniformly at the following block rates:

For the first 10,000 gallons per month, or 120,000 gallons per year, 20¢ per M. gallons.

For the second 10,000 gallons per month, or 120,000 gallons per year, 17½¢ per M. gallons.

For the third 10,000 gallons per month, or 120,000 gallons per year, 15¢ per M. gallons.

For all excess over 30,000 gallons per month, or 360,000 gallons per year, 12½¢ per M. gallons.

Contracts for service under this schedule are to be for a period of not less than one year. If after a year's trial it is found that the above schedule does not operate fairly, the Board will entertain an application for further consideration.

Dated July 10th, 1916.

In re sale of Stock and Bonds—Lambertville Public Service Co., etc.

No. 365.

IN THE MATTER OF THE APPLICATION OF THE NEW JERSEY GAS AND ELECTRIC COMPANY AND LAMBERTVILLE PUBLIC SERVICE COMPANY FOR APPROVAL OF SALE OF STOCK AND BONDS OF LAMBERTVILLE PUBLIC SERVICE COMPANY AND ISSUE OF BONDS AND STOCK OF NEW JERSEY GAS AND ELECTRIC COMPANY.

The application before the Board is presented because the same interests control the New Jersey Gas and Electric Company and Lambertville Public Service Company and desire to effect a virtual consolidation.

It appears that the two companies are situated some fifty miles apart. The Board holds that the intervening territory could not be considered productive of much business and that the companies are engaged in businesses not related to each other. The fact that one is a gas plant and the other an electric plant eliminates many of the opportunities for practical economy in management. The petition is dismissed.

George Whitfield Betts, for New Jersey Gas and Electric Company.

W. Holt Apgar, for the Lambertville Public Service Company.

In this application, made jointly by the two companies named above, approval is asked of the issues of certain securities necessary to purchase the stock and bonds of the Lambertville Public Service Company, and of the transfer of the stock of the Lambertville Company to the New Jersey Gas and Electric Company.

The New Jersey Gas and Electric Company exists under the "Gas Act," and was formed within the past few months, by the purchasers at foreclosure sale of the property of the Dover, Rockaway and Port Oram Gas Company. This company owns and operates a plant for the manufacture, dis-

In re sale of Stock and Bonds—Lambertville Public Service Co., etc.

tribution and sale of gas in the Town of Dover, and the Boroughs of Rockaway and Wharton, and the intervening territory, all located very close to the Town of Dover.

The Lambertville Public Service Company was formed under the General Corporation Act, some few months ago by the purchasers at foreclosure of the property of the Lambertville Heat, Light and Power Company, the purchase price having been \$5,000, in addition to the assumption of the outstanding bonds of \$80,000. Upon the reorganization forming the present company, the Commission approved, the issuance of stock to the amount of \$5,000. The Lambertville Public Service Company generates electricity in the City of Lambertville and distributes and sells the same within the city and within the Borough of New Hope, Pa., selling it, however, to the New Hope Electric Light Company for distribution in the latter town.

Lambertville and Dover are situated about fifty miles apart, the intervening territory being supplied, in some instances, by other companies operating electric light plants and at least one gas plant.

The application now before the Board is presented because the same interests control both the Lambertville and Dover properties and desire to effect a virtual consolidation. Testimony was submitted aiming to show that great advantages would accrue to the combined company by economy in operation and management and by reason of greater facility in financing the combined operations.

The testimony submitted in this case with regard to greater economies in operation is not convincing. There does not appear to be any particular advantage to either the Lambertville electric company or to the Dover gas company that would arise because of any combined supervision of these two plants. They are situated, as stated, some fifty miles apart, with intervening territory that would not

In re sale of Stock and Bonds—Lambertville Public Service Co., etc.

be considered productive of very much business, and they are engaged in businesses not related to one another.

It may be true that financing of combined operations is somewhat easier than financing small companies, but in the opinion of the Board this is not sufficient reason to warrant the approval of this application. The operations of these companies are not cognate. One is for the production, distribution and sale of gas and the other for the production, distribution and sale of electrical energy. While it is true that both gas and electric light companies require high pressure steam, and the employment of firemen and some other classes of labor and that economies might result if the two plants were built upon the same tract of land, the location of these properties some fifty miles apart would prevent any economies in ordinary operation. The fact that one is a gas plant and the other an electric plant eliminates many of the opportunities for practical economy in management.

The matter of respective values is not dealt with in this report. The petition will be DISMISSED for the reasons stated.

An Order will so enter.

Dated July 10th, 1916.

ORDER.

This application having been duly heard and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board's approval of this petition is withheld and the application is HEREBY DISMISSED.

Dated July 10th, 1916. .

Wildwood and Delaware Bay Short Line R. R. Co.—Arrears of Taxes.

No. 366.

IN THE MATTER OF THE APPLICATION OF WILDWOOD & DELAWARE BAY SHORT LINE RAILROAD FOR A COMPROMISE AND SETTLEMENT OF THE ARREARS OF TAXES DUE FROM SAID RAILROAD COMPANY TO THE STATE OF NEW JERSEY.

The Board is asked to compromise and settle arrears of taxes, it being claimed that the assessments were made in error and that this was not discovered until the time for appeal had passed.

The Board finds that the taxes should be compromised, within the intent of the act of the legislature, and fixes a sum to be paid as a proper compromise and settlement.

O. I. Blackwell and Evans G. Slaughter, for the company.

The petition in this matter sets forth that the property of the said railroad company was assessed for the years 1913 and 1914 at a valuation of \$194,690.00 and the tax levied thereon was \$3,937.44 and \$4,016.25 respectively. The sum of \$1,500 was paid on account of the tax levied in the year 1913, leaving a balance of \$2,437.44 unpaid for said year. The amounts mentioned are independent of statutory penalties for non-payment. The petition sets forth that the said assessments were made under a misapprehension or error and that the time for appeal had passed before such fact was discovered and the said taxes have not been paid; and accordingly ask to have the said taxes reduced and corrected to correspond with the tax assessed by the State Board of Taxes and Assessments for the year 1915 under the authority conferred upon this Board by the act of the legislature passed for that purpose and known as Chapter 222 of the Laws of 1916, page 449.

From the testimony of Louis Focht, the engineer for the State Board of Taxes and Assessments it appears that the taxes in question were levied under an error and misapprehension of the facts, and that the witness personally made

Wildwood and Delaware Bay Short Line R. R. Co.—Arrears of Taxes.

an examination of all the property belonging to the said railroad in the year 1915; that its total value for taxing purposes was \$109,525, and that the taxable property of the said railroad in the years 1913 and 1914 was not of any greater value.

The financial statement of the company for the year 1915 shows that its gross income was \$51,626.98; its gross operating expenses \$24,107.64, and other deductions for interest on bonds, taxes, rent of terminal property, repairs and discounts of notes amounted to \$25,812.70, leaving a balance of only \$1,706.59. The financial statement of the said company for the year 1913 shows a deficit of \$14,049.46, and for the year 1914 of \$11,498.62. No dividend has ever been paid on the stock of the company.

The Board has arrived at the conclusion that the said taxes should be compromised within the intent and meaning of the act of the legislature hereinbefore referred to and that a compromise and settlement of such arrearages of taxes should be made.

We, therefore, find and determine that it is in the public interest that there should be a compromise and settlement of the taxes due the State and fix the sum of \$728.59 with 6% interest thereon from February 1, 1914, to be paid on or before August 15, 1916, as a proper compromise and settlement of the said tax assessed in the year 1913; and the further sum of \$2,271.50 with 6% interest thereon from February 1, 1915, to be paid on or before September 15, 1916, as a proper compromise and settlement of the said tax assessed in the year 1914; and recommend that the State remit all taxes and interest in excess of the sums last above mentioned provided the same are paid to the State within the dates specified.

Dated July 14, 1916.

Bogota Land Co. vs. Hackensack Water Co.

No. 367.

BOGOTA LAND COMPANY

VS.

HACKENSACK WATER COMPANY.

William M. Seufert, for the complainant.

H. L. De Forest, for the Hackensack Water Company.

E. F. Smith, for the Bogota Water and Light Company.

The Bogota Land Company is developing a tract of land to the eastward of the Hackensack River, bordered on the north by Cedar Lane, which is the boundary line between Bogota Township and Teaneck Township.

The Bogota Land Company applied to the Hackensack Water Company for water service in certain streets and more particularly for service to the new schoolhouse. The complainant was informed that the service should be furnished by the Bogota Water and Light Company, whose plant is located in the Borough of Bogota.

The complainant alleged that service from the Hackensack Water Company is much more desirable because of the greater pressure afforded and the low rates charged by that company, and contended that its request was all the more reasonable because the Bogota Water and Light Company obtained the greater portion of its water from the Hackensack Water Company. It appears that both of the water companies have ample franchise rights in the territory involved in this complaint.

The Hackensack Water Company has a very large main now in place in Cedar Lane and it would not appear to be

West Monmouth Water Co.—Ordinance—Farmingdale.

an economical scheme for the south side of Cedar Lane to be supplied by the Bogota Water Company and the north side of the same street to be supplied by the Hackensack Water Company. Clearly, service in this territory should be supplied from the large main now in place in Cedar Lane. The water is the same as would be supplied by the Bogota Water Company, the pressure especially for fire purposes would be higher, the rates would be lower, and it is the Board's conclusion that service to the complainant should be supplied by the Hackensack Water Company under the general terms governing extensions.

Dated August 15, 1916.

No. 368.

IN THE MATTER OF THE APPLICATION FOR THE APPROVAL OF
AN ORDINANCE OF THE BOROUGH OF FARMINGDALE IN
MONMOUTH COUNTY GRANTING TO THE WEST MONMOUTH
WATER COMPANY PERMISSION TO LAY ITS PIPES, &C., IN
CERTAIN PUBLIC HIGHWAYS FOR SUPPLYING WATER TO
THE INHABITANTS OF SAID BOROUGH.

The Board determines that the procedure adopted in the enactment of the ordinance, approval of which is asked, is not in compliance with the requirements of the Statute and withholds its approval.

Wm. J. Lansley, for the company.

Application is made to this Board for the approval of an ordinance of the Borough of Farmingdale, in the County of Monmouth, entitled:

"An ordinance granting to the West Monmouth Water Company, its lessees, successors and assigns, the right to construct, maintain and

West Monmouth Water Co.—Ordinance—Farmingdale.

operate a water supply system in the Borough of Farmingdale, in the State of New Jersey, and to use the streets, avenues, parks, parkways and other public places therein.”

The application is made under Section 24, Chapter 195, of the Laws of 1911 (Public Utility Act, so called), which in part provides:

“No privilege or franchise hereafter granted to any public utility as herein defined, by any political subdivision of this state, shall be valid until approved by said Board, such approval to be given when, after hearing, said Board determines that such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest,” &c.

Hearing was had on this application at the State House, in Trenton, New Jersey, on June 27th, 1916, and again on July 11th, 1916.

The procedure adopted in the enactment of the ordinance, approval of which is asked, is that provided for in the statute commonly designated “The Limited Franchise Act (Chapter 36, Laws 1906, (Comp. Stat. Vol. 3, page 3562), and the acts supplemental thereto and amendatory thereof), which among other things provides:

“Sec. 2. No consent for the use of any street, avenue, park, parkway or other highway, either above, below or on the surface thereof shall be granted by any municipality until a petition shall have been filed with the Clerk of such municipality by the person or corporation desiring the same; etc.

“Upon the filing of such petition, the same shall not be considered by the board or body of such municipality authorized by law to make the grant therein petitioned for, until public notice shall be given.” etc.

“Such notice shall specify the name of the person or corporation presenting such petition, the date and hour when the same will be considered by said board or body, the date of filing same, the character of the use to which such street, avenue, park, parkway, highway or other public place is to be put; the street, avenue, park, parkway or other public place in such municipality through which the same shall extend and the time for which such permission or consent is sought, and in

West Monmouth Water Co.—Ordinance—Farmingdale.

case of street railways or traction companies, the character of the road proposed to be constructed, operated or maintained and the motive power to be used thereon."

The notice posted and published in this procedure is as follows:

NOTICE.

"A public hearing will be held at 8 p. m. at the Borough Hall, Farmingdale, N. J., on Tuesday, April 4, 1916, to consider the application of the West Monmouth Water Company for a franchise to use the streets of the Borough of Farmingdale for the purpose of supplying water for fire and domestic purposes.

FRANK P. VAN NOTE,
Borough Clerk."

There is, therefore, omitted from the notice two statutory requirements, viz.: (1) the date of filing (petition) same; (2) the time for which such permission or consent is sought.

The Board, therefore, determines that the procedure adopted in the enactment of the ordinance, approval of which is asked, is not in compliance with the requirements of the statute and withholds its approval, and the petition will be DISMISSED. An order will so enter.

In view of this determination, further consideration by this Board of the applications of the West Monmouth Water Company for the approval of a mortgage and also for the approval of the issue of securities, is unnecessary until a proper franchise is obtained by the West Monmouth Water Company from the municipal authorities based on proceedings in compliance with the statute.

Dated August 15, 1916.

Merger—Freehold Gas Light Co. and Standard Gas Co.

ORDER.

This application having been duly heard and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board's approval of this petition is withheld and the application is HEREBY DISMISSED.

Dated August 15, 1916.

No. 369.

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF AGREEMENT OF MERGER AND CONSOLIDATION, FREEHOLD GAS LIGHT COMPANY AND STANDARD GAS COMPANY.

The agreement under consideration provides for the issuance of capital stock of the consolidated company in the amount of \$69,000 to be given in exchange for the capital stock of the Freehold Gas Light Company.

Should such issue be made it would be necessary to set up a suspense account to be written off later, which the Board deems inadvisable.

The Board announces its willingness to approve a consolidation agreement based upon stock issue of \$59,000 instead of \$69,000 as proposed.

William E. Foster and J. Hector McNeal, for the company.

The petition of the Freehold Gas Light Company and the Standard Gas Company shows that the Freehold Gas Light Company was incorporated by special act of the New Jersey legislature on or about March 20, 1857, and constructed a plant in Freehold. The Standard

Merger—Freehold Gas Light Co. and Standard Gas Co.

Gas Company was originally incorporated September 16, 1899, and on February 15, 1913, was consolidated with the Atlantic Highlands Gas Company. This latter consolidation was approved by the Commission April 22, 1913, after careful analysis of the values involved in the consolidation.

The application now before the Board provides that the present stockholders of the Standard Gas Company shall retain their shares and that the stockholders of the Freehold Gas Light Company shall receive 2.3 shares of new stock of the Standard Company for each share of stock of the Freehold Gas Light Company now held by said shareholders.

In passing upon the terms of consolidation, the Board has heretofore held that the basis of consolidation must be the present value of the properties consolidated, making due allowance for accrued depreciation, but including proper allowances for working capital, materials and supplies, cost of organization, cost of obtaining franchises and other legitimate and reasonable intangible values. The application presented to the Board at this time does not fully conform to the standards now guiding the Board in the disposition of these consolidations. So far as the Freehold property is concerned, the basis of consolidation is the price which the present stockholders paid for the stock of the Freehold company. This cannot be taken as a proper basis for a consolidation of public utility properties. With reference to the Standard Gas Company, its present capitalization has been approved by the Commission in connection with the consolidation which was approved by the Commission April 22, 1913.

The Freehold Gas Light Company now has outstanding capital stock in the par value of \$30,000, for which, it is understood, the present holders paid the sum of \$69,000. The Freehold company has outstanding bonded indebted-

 Merger—Freehold Gas Light Co. and Standard Gas Co.

ness of \$20,000. There has been advanced to the Freehold company and expended upon the property of that company by the Standard Gas Company the sum of \$10,268.97, in addition to which the balance sheet of the Freehold company shows notes payable to the extent of \$10,500.

A careful inventory and appraisal has been made of the property of the Freehold Gas Light Company and it is found that the total assets amount to \$119,457. The accrued depreciation is placed at \$25,958, the advances from other corporations, \$9,364.97, notes payable, \$10,500. The agreement of consolidation provides for the issuance of capital stock of the consolidated company in the amount of \$69,000, to be given in exchange for the capital stock of the Freehold Gas Light Company. If this agreement is to be approved by the Board and capital stock in the amount of \$69,000 issued, in order to provide a balance, it would be necessary to set up on the asset side under the head of "Other Intangibles" or in a suspense account, \$10,055.82, which would have to be written off later.

BALANCE SHEET OF FREEHOLD GAS CO. 5-31-16.

Based on P. U. C. Valuation of Physical Property as of same date.

Acct. No.	Item	Assets	Liabilities
100	Fixed Capital	\$119,457.00	
152	Material and Supplies	3,796.87	
153	Cash	1,345.27	
155a	Consumer's Accts. Rec.	2,227.62	
155b	Other Accts. Rec.	913.03	
164	Prepayments	43.45	
200	Funded Debt		\$20,000.00
201	Taxes Accrued		346.20
204	Interest "		285.00
207	Notes Payable		10,500.00
208	Advances from other corporations		9,364.97
209	Consumers' Deposits		76.00
210	Other Accts. Pay		2,308.89
215	Accrued Amortization of Capital		25,958.00
Sub-total liabilities			68,839.06

Merger—Freehold Gas Light Co. and Standard Gas Co.

220	Capital stock	30,000.00
221	Corporate Surplus	28,944.18
		<hr/>
		\$127,783.24 \$127,783.24

If merger is approved on basis stated in petition, viz., taking of bonds as they stand and issue of 2.3 shares of stock for each share of old, it would be equivalent to adding an additional asset account to the above and changing capital stock to \$69,000, wiping out surplus and setting up a deficit account as

167	(Other suspense or)	
105	(Other Intangibles)	\$ 10,055.82
220	Capital Stock	\$69,000.00
221	Corporate Surplus	0.
		<hr/>
		\$137,839.06 \$137,839.06

It appears to be undesirable, owing to complications which arise from them, to approve transactions in which it is necessary to set up suspense accounts that must be written off later. The Board is, therefore, not willing to approve in this consolidation the issuance for the Freehold company stock, of stock of the new company to the extent of \$69,000, but will approve, upon proper application therefor, a consolidation agreement based upon the issue of stock reduced by the sum of \$10,000, or a total issue of \$59,000.

Dated August 15, 1916.

No. 370.

IN THE MATTER OF THE APPLICATION OF THE STANDARD GAS COMPANY FOR APPROVAL OF A MORTGAGE AND THE ISSUE OF BONDS AND STOCK.

Approval is granted for proposed issue of securities with the understanding that outstanding capital obligations will be liquidated.

William E. Foster, for the company.

Standard Gas Co.—Mortgage—Bonds and Stock.

This application involves: (1) the creation of a new mortgage in substitution of an existing mortgage; (2) the issue of bonds thereunder in place of a portion of bonds now outstanding; (3) the issue of stock in substitution of the balance of bonds of the Standard Gas Company now outstanding; (4) the issue of stock to provide for a substitution of bonds of the Freehold Gas Light Company; (5) the issue of stock to pay for extensions and additions not heretofore capitalized.

The Standard Gas Company was formed by consolidation of the Atlantic Highlands Gas Company and the Standard Gas Company, this consolidation being approved April 22, 1913.

At the time of the consolidation, all of the property of the consolidated company was appraised and the consolidation was approved upon the basis of the value of the property. A general mortgage was approved and in addition to provisions for the existing debts, etc., bonds were approved of a par value of \$105,000, which netted the company approximately \$84,000 to be used for additions and extensions to the plant and system of the company.

The Atlantic Highlands Gas Company was the owner of a portion of the stock of the Equitable Light, Heat & Power Company, which, in turn, was the owner of all of the stock of the Standard Gas Company. The result of this transaction was to bring into the treasury of the consolidated company a portion of the stock of the Equitable Company, which, in turn, then owned some of the stock of the consolidated company. It was found that the stock of the Standard company held by the Equitable company had cost the Atlantic Highlands company the sum of \$30,000, and in a certificate adopted by the Board April 22, 1913, in the matter of the application of the Standard Gas Company for approval of a mortgage and issues of bonds and capital

Standard Gas Co.—Mortgage—Bonds and Stock.

stock, the company was required to retain this ownership until its equity could be disposed of for at least the sum of \$30,000.

November 19, 1914, the company submitted an application for approval of bonds to be issued at 80, in the par value of \$22,193. Analysis at that time disclosed the fact that the net additions not then capitalized did not amount to 80% of the proposed issue and it was further brought out that bonds of the company had been issued as collateral on a basis which could not meet with the approval of the Board and the Board therefore withheld its approval of the application. A report upon this was filed February 9, 1915.

In order to pass upon the present application, an analysis has been made of all of the expenses of the company since the time of the consolidation and it is found that the total expenditures charged to capital account amount to \$152,625. Of this amount \$84,000 was obtained from the sale of bonds heretofore referred to, which were approved at the time of the consolidation. The stock of the Equitable Light, Heat & Power Company has been sold by the company for the amount of \$30,000, in accordance with the dictum of the Board in the memorandum on the earlier consolidation. This leaves uncanceled at this time the sum of \$38,625. Of this amount it appears that approximately \$2,000 is for additions which, probably, are not properly chargeable to capital account but would have to be charged off when certain property in the old plant at Matawan is actually abandoned. This leaves the net amount of approximately \$36,625 for which the company could at this time issue securities and to provide for the payment of these debts the company asks the approval of the issue of stock in the amount of \$30,000.

Standard Gas Co.—Mortgage—Bonds and Stock.

It appears that under the mortgage approved at the time of consolidation in 1913 the larger proportion of the bonds has not been sold to investors. The company has therefore applied for the approval of a new mortgage under which not over 80% of the extensions to property may be covered by proceeds from bonds. This mortgage is for the sum of \$1,000,000, at an interest rate of 5%. There are now outstanding under the old mortgage \$630,000 of bonds. In accordance with the application of the company, the Board will, after approval of the new mortgage, approve the issue of bonds in the amount of \$600,000, which are to be exchanged at par for a like amount of bonds of the old issue. The Board will approve, also, the issue of capital stock of the company in the amount of \$30,000 to be exchanged at par for the balance of the outstanding bonds under the old mortgage, upon condition that the unamortized debt discount and expense pertaining to this \$30,000 par value of bonds be extinguished during the life of the \$600,000, to be exchanged at par for a like amount of bonds of the old issue together with all unamortized debt discount and expense pertaining to the latter. The Board will approve of the issue of capital stock in the amount of \$20,000 to be exchanged for a like amount of bonds of the old Freehold Gas Light Company. The Board will also approve the issue of capital stock in the par value of the \$30,000, to pay for the additions and betterments to plant and system not heretofore capitalized. It is the understanding of the Board in thus approving these issues that all of the outstanding capital obligations of the consolidated company will be liquidated through the issuance of the securities referred to above with the exception of the small balance of approximately \$6,000, which consists of construction work now in progress.

Dated August 15, 1916.

Middlesex and Monmouth Electric Light, Heat and Power Co.—Lease
to Monmouth Lighting Co.

No. 371.

IN THE MATTER OF THE APPLICATION OF THE MIDDLESEX AND
MONMOUTH ELECTRIC LIGHT, HEAT & POWER COMPANY
FOR PERMISSION TO LEASE PROPERTY TO MONMOUTH
LIGHTING COMPANY.

Application for approval of lease dismissed, it seeming probable that in the course of another year or so, conditions may change sufficiently so that a consolidation may be brought about. The Board believes that leasing of the properties should be resorted to only after it is apparent that no other and more satisfactory method of bringing the properties together is possible.

C. L. S. Tingley, for the company.

The Middlesex & Monmouth Electric Light, Heat & Power Company owns a system for the distribution of electric energy in the territory extending from South Amboy to Atlantic Highlands, but not including the latter place. The company's system is connected with the power station of the Jersey Central Traction Company, which owns all of the capital stock of the Middlesex & Monmouth Electric Light, Heat & Power Company.

The Monmouth Lighting Company is an electric light company owning a distribution system located in Freehold, Englishtown, Farmingdale, Marlborough and the intervening territory. The Monmouth Lighting Company is furnished with electric energy from the power plant of the Jersey Central Traction Company near Keyport.

In the matter before the Board, the Middlesex and Monmouth Electric Light, Heat & Power Company proposes to lease its distribution system to the Monmouth Lighting Company for a period equivalent to the balance of the term of the present Jersey Central Traction mortgage, approximately thirty years.

**Middlesex and Monmouth Electric Light, Heat and Power Co.—Lease
to Monmouth Lighting Co.**

The Board is not willing to approve this lease, believing that to do so would merely further complicate an already tangled situation. It is in evidence that parties in control of the Jersey Central Traction Company have been gathering in from time to time bonds under the first and second mortgages of the latter company, and it appears to the Board that the principal obstacles in the way of consolidating the two electric light companies referred to in this report are due to the conditions found in the mortgages. The Board is of opinion that, eventually, these two electric light companies should be consolidated and that no term lease should be entered into as now proposed. It seems probable that, in the course of another year or so, conditions may change sufficiently so that a consolidation may be brought about, and the Board believes that leasing of these properties should be resorted to only after it is apparent that no other and more satisfactory method of bringing the properties together is possible.

The Board, therefore, will not approve the lease of the property of the Middlesex & Monmouth Electric Light, Heat & Power Company to the Monmouth Lighting Company, and the petition will be DISMISSED. An order will so enter.

Dated August 15, 1916.

ORDER.

This application having been duly heard and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board's approval of this petition is withheld and the application is HEREBY DISMISSED.

Dated August 15, 1916.

Jersey Central Traction Co.—Lease to Monmouth Lighting Co.

No. 372.

IN THE MATTER OF THE APPLICATION OF THE JERSEY CENTRAL
TRACTION COMPANY FOR PERMISSION TO LEASE PLANT TO
MONMOUTH LIGHTING COMPANY.

Application for approval of lease dismissed, the Board believing that the leasing of the plant should not be resorted to until every effort has been made to bring about some better method of efficient combined operation.

C. L. S. Tingley, for the company.

The Jersey Central Traction Company is the owner of a power plant located near Keyport. The Monmouth Lighting Company is an electric utility serving Freehold, Englishtown, Farmingdale, Marlborough and intervening territory and expects to make extensions into territory not now served by other companies.

It is proposed to lease the power plant of the Jersey Central Traction Company to the Monmouth Lighting Company for a term of years equal to the unexpired portion of the term covered by the existing mortgage, which is approximately thirty years.

The Jersey Central Traction Company is the owner of all of the capital stock of the Middlesex & Monmouth Electric Light, Heat & Power Company, to which company electric energy is sold by the traction company. It is proposed also to lease the property of the Middlesex & Monmouth Electric Light, Heat & Power Company to the Monmouth Lighting Company.

While the Board appreciates the desirability of having a power plant under the operation and control of the electric lighting company, it does not believe that it should consider the proposed lease until such time as it may be possible

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to consolidate the Middlesex & Monmouth Electric Light, Heat & Power Company with the Monmouth Lighting Company.

The Board believes that the leasing of the plant should not be resorted to, until every effort has been made to bring about some better method of efficient combined operation.

The petition therefore will be DISMISSED. An order will so enter.

Dated August 15, 1916.

ORDER.

This application having been duly heard and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board's approval of this petition is withheld and the application is HEREBY DISMISSED.

Dated August 15, 1916.

No. 373.

THE WILDWOOD EXTENSION REALTY COMPANY

VS.

THE WILDWOOD & DELAWARE BAY SHORT LINE RAILROAD
AND ATLANTIC CITY RAILROAD COMPANY.

Assuming that a stipulation in the deed conveying lands for right of way under which the Wildwood and Delaware Bay Short Line Railroad Company must maintain a station at West Wildwood involves a reasonably adequate train service, such service should depend upon the

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business offered and expand with the requirements and growth of the community.

The Board finds that all local trains should be scheduled to stop at West Wildwood on flag or notice to conductor.

Proper stational facilities in connection with the maintenance of the station at West Wildwood should include the issuance of tickets to said point, affixing to the station building the name of West Wildwood; issuing of time tables showing thereon West Wildwood, also trains scheduled to stop and flag stops.

Harrison H. Voorhees, for the petitioner.

J. Fithian Tatem, for Wildwood & Delaware Bay Short Line Railroad Company.

Thomas E. French, for Atlantic City Railroad Company.

The petitioner herein seeks an order requiring the respondent to provide adequate train service at West Wildwood, a station on the Wildwood & Delaware Bay Short Line Railroad, located about one mile west of Wildwood—the terminal of said railroad. The railroad is 4.4 miles in length and extends from Wildwood to Wildwood Junction.

The Atlantic City Railroad Company under an agreement with the Wildwood & Delaware Bay Short Line Railroad Company operates express and excursion trains from Philadelphia to Wildwood, via Wildwood Junction on a percentage basis of the gross revenue resulting from business to and from points on the latter road.

It is alleged in the petition that under the deed conveying lands for the right of way the Wildwood & Delaware Bay Short Line Railroad Company is obligated to maintain a station at West Wildwood, and in pursuance of such stipulation a building was erected and a station established.

The time table of the respondents does not show West Wildwood as a station stop, nor has any means been pro-

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vided for apprising passengers of the arrival and departing time of trains at said point.

It appears that a portion of West Wildwood is more conveniently located, with respect to distance to be traveled, to the West Wildwood station than the Wildwood station; and within the portion nearest the station are seventeen residences, nearly all of which are occupied.

The West Wildwood development practically commenced this year, and undoubtedly its future will depend to a great extent on adequate train service. Assuming that the stipulation in the deed requiring the railroad company to maintain a station at West Wildwood involves a reasonably adequate train service, such service should depend upon the business offered and expand with the requirements and growth of the community.

The petitioner advances as a present requirement the stopping of express trains at West Wildwood. No testimony was produced showing that such service is required at present for the daily use of any passenger.

The Wildwood & Delaware Bay Short Line Railroad is practically a new enterprise and was constructed primarily to provide fast service from Philadelphia to Wildwood in conjunction with the Atlantic City Railroad. The Pennsylvania Railroad also runs from Philadelphia to Wildwood and to secure sufficient business to be self maintained it is essential that the Wildwood & Delaware Bay Short Line Railroad possess advantages over an established line to attract business. The fast express service, therefore, represents an important asset and should be interfered with to the least possible extent until business is established demanding additional service, when fast trains could be stopped at local points without the material loss that would accrue if such trains are stopped under present conditions.

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Line R. R. Co. et al.

A considerable benefit would result by having excursion trains from Philadelphia to Wildwood stop at West Wildwood, to afford those desiring to view the development the cheapest rate of transportation, coupled with the advantage of a train stop on the ground. To serve such persons, as well as those who desire to stop at West Wildwood for recreation, it appears that such a service should be provided daily from Philadelphia in the morning and return train in the late afternoon. This service should be provided by south bound trains No. 411 and No. 611 stopping at West Wildwood to let off passengers and north bound trains No. 630 and No. 482 stopping to take on passengers.

The current train schedule between Wildwood and Wildwood Junction is based on connections with the Atlantic City Railroad trains, and travel to and from West Wildwood under existing conditions should be afforded a local train movement that will provide connections with express trains at Wildwood Junction and Wildwood. To provide this service all local trains should be scheduled to stop at West Wildwood on flag or notice to conductor.

Owing to the existing schedule of express train service on the Cape May division of the Atlantic City Railroad through Wildwood Junction and the difficulty of attempting in mid-season to re-arrange such schedule to reduce the time of train connections at Wildwood Junction, this condition should be considered in the preparation of the schedule for next year when a service should be established reducing to the minimum the time of train connections at Wildwood Junction.

Proper stational facilities in connection with the maintenance of the station at West Wildwood should include the issuance of tickets reading to said point, affixing to the station building the name, "West Wildwood"; issuing of

Erie R. R.—Issue of bonds.

time table showing thereon West Wildwood, also trains scheduled to stop, and flag stops.

It is recommended that the changes and improvements to service which should take effect this year be made without delay, in order that benefit may be derived during the present season. If the company declines to accede to the recommendation, an order will issue.

Dated August 15th, 1916.

No. 374.

IN THE MATTER OF THE APPLICATION OF ERIE RAILROAD COMPANY FOR APPROVAL OF THE ISSUE OF \$2,380,000 OF GENERAL LIEN BONDS UNDER ITS FIRST CONSOLIDATED MORTGAGE DEED, DATED DECEMBER 10, 1895.

The Erie Railroad Company is a public utility as defined by the public utility act. Said act is applicable to the mortgaging, disposing of or encumbering by the Company its leasehold interests in the railroads and franchises within this State, and to the issuance of bonds under a mortgage of such leasehold interests.

The statute which places a limit of eighty cents on the dollar on the sale of bonds of certain corporations is limited to "A corporation of this State." The Erie Railroad Company is not a corporation of this State, and the limitation imposed by the statute does not extend to that company.

The outstanding underlying bonds, for which the bonds now proposed to be issued are to be substituted, bear interest, at the rate of seven per cent. The substituted bonds bear interest at the rate of four per cent. These bonds may be disposed of at seventy if more cannot be obtained, which will effect an interest rate of 5.71.

The Board holds that it would not be justified in prescribing as a condition of its approval a minimum sales price in excess of seventy.

Gilbert Collins and George F. Brownell, for the Company.

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Application is made by the Erie Railroad Company, a corporation of the State of New York, for an order of this Board approving the issue of \$2,380,000 (face value) of "General Lien Bonds," bearing interest at the rate of four (4) per centum per annum, under its First Consolidated Mortgage Deed, dated December 10, 1895, made and delivered to The Farmers' Loan and Trust Company, Trustee.

This mortgage, given as security for \$175,000,000, of bonds maturing January 1, 1996, is a general railroad mortgage.

It covers the railroad and property of the Erie Railroad Company in the State of New York; its interest in various properties in the States of Pennsylvania and Ohio and certain stocks and bonds.

It also covers leaseholds of railroads within the State of New Jersey and shares of the capital stock of the corporations owning such leased roads, held by the Erie Railroad Company.

Specifically it covers that company's interest in the leases of the railroads, located wholly within the State of New Jersey, of the Paterson & Hudson River Railroad Company and of the Paterson & Ramapo Railroad Company, both corporations of the State of New Jersey.

The creation and assignment of these leaseholds was sanctioned by the State of New Jersey by legislative acts (P. L. 1853, p. 480 and P. L. 1862, p. 206).

It further covers specifically \$499,000 of bonds of the Paterson & Newark Railroad Company, a corporation of the State of New Jersey, whose railroad is located within the State, secured by a mortgage of that company, dated January 1, 1868.

It further includes, by force of a general clause, certain parcels of land in the State of New Jersey, which have at

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various times been acquired by the Erie Railroad Company and its predecessors.

The mortgage reserves certain general lien bonds for the purpose of refunding, or acquiring and depositing with the trustee, or discharging bonds outstanding under various underlying mortgages, with the intention of ultimately making the mortgage a first mortgage upon the property of the Erie Railroad Company when the bonds outstanding under these underlying mortgages should be acquired and pledged thereunder, or refunded or discharged. The amount of general lien bonds reserved for this purpose was in each case an amount equal to the par value of the then outstanding bonds secured by these underlying mortgages. The trustee was by the terms of the mortgage authorized to certify general lien bonds for a like amount of the underlying bonds.

Among the underlying mortgages on account of which general lien bonds were reserved was a mortgage given under date of June 1, 1876, by the Buffalo, New York & Erie Railroad Company to John A. C. Gray, Trustee, to secure an issue of \$2,380,000 of seven (7) per cent. bonds, due June 1, 1916. This mortgage covered the railroad and property of the company, located wholly in the State of New York.

In 1896, the Erie Railroad Company being the lessee of the railroad of the Buffalo, New York & Erie Railroad Company, and the owner of its entire outstanding capital stock, by a proceeding under the statutes of the State of New York effected the merger into the Erie Railroad Company of the Buffalo, New York & Erie Railroad Company, and acquired the ownership of the railroad and property of that company. Such railroad and property is now subject, first to the mortgage before referred to of the Buffalo, New York & Erie Railroad Company securing \$2,380,000 of seven

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per cent. bonds, due June 1, 1916, and, next, to the mortgages of the Erie Railroad Company.

This application contemplates the substitution of \$2,380,000 of the General Lien Bonds of the Erie Railroad Company, bearing interest at the rate of four per cent. and secured by its First Consolidated Mortgage Deed dated December 10, 1895, before referred to, in accordance with the reservation made in said mortgage for the \$2,380,000 of the bonds of the Buffalo, New York & Erie Railroad Company, bearing interest at the rate of seven per cent., secured by the mortgage of that company given under date of June 1, 1876, before referred to, and which bonds matured on June 1, 1916.

It is proposed to sell the bonds, approval of the issuance of which is applied for, at not less than seventy per cent. of the par value thereof.

A like application for approval made by the Erie Railroad Company to the Public Service Commission of the State of New York, Second District, has been granted.

In connection with this application a question was raised as to the jurisdiction of this Board. In the discussion of the question a wide field was traversed.

We, however, find it unnecessary to determine the many broad and important propositions which were advanced in furtherance of the claim that the State could not, and had not attempted to confer, make the approval of this Board a prerequisite to the issue of the bonds in question.

In our judgment the State has power under the circumstances of this application to require such approval.

It is true that, technically, the Erie Railroad Company "owns no railroad in this State."

It is, however, with the sanction of the State the lessee of the railroads and franchises of the Paterson & Hudson

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River Railroad Company and of the Paterson & Ramapo Railroad Company.

It is, as such lessee, engaged in the operation of these railroads under such franchises.

Its interests as such lessee of these railroads and franchises are not subject to the mortgage of the Buffalo, New York & Erie Railroad Company nor to the satisfaction of the bonds secured thereby.

They are, however, subject to the mortgage under which the bonds, which are the subject of this application are proposed to be issued. The issue of these bonds will, therefore, increase by the amount thereof the encumbrance to which these interests are now subject.

These railroads and franchises could neither be conveyed, leased nor encumbered without the assent of the State.

To the creation and assignment of the leasehold interests therein the State as before indicated gave its assent by legislative enactment.

If the State's assent is requisite to the conveyance, leasing or encumbering of the railroads and franchises, its sanction would likewise seem to be essential to the assignment or encumbrance of a leasehold interest in the railroads and franchises. Particularly would this seem to be true where, as here, the leasehold interests are "for and during the continuance of the charters" of the lessors and the existence of such lessors is without limit of time.

If the assent of the State to the encumbrance of the leaseholds of these railroads and franchises is requisite it logically follows that the State may, as a condition of its assent, prescribe that the approval of an administrative body created by it be secured.

Finding, as we do, that the State, under the circumstances of this application, has the power to require the approval of this Board as a condition precedent to the encumbrance

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of these leasehold interests through the issuance of the bonds to which this application relates, the question whether the State has exercised such power remains to be considered.

Section 18 (h) of the act creating this Board provides that no public utility as therein defined “shall * * * without the approval of the board sell, lease, mortgage, or otherwise dispose of *or encumber* its property, franchises, privileges or rights, or any part thereof.”

Section 18 (e) provides that no public utility as therein defined shall “hereafter issue any * * * bonds or other evidences of indebtedness payable in more than one year from the date thereof until it shall have first obtained authority from the board for such proposed issue.”

Section 15 of the act defines the term “public utility” “to include every * * * corporation, * * * their lessees, * * * that now or hereafter may own, operate, manage or control within the State of New Jersey any steam railroad. * * * for public use * * * under privileges granted or hereafter to be granted by the State of New Jersey.”

The Erie Railroad Company is a corporation of the State of New York. It is, however, lessee of the Paterson & Hudson River Railroad Company and of the Paterson & Ramapo Railroad Company, corporations of the State of New Jersey. As such lessee it operates, manages and controls within the State of New Jersey the steam railroads of these companies for public use. Such operation is under franchises, consequently under privileges, granted by the State of New Jersey.

The Erie Railroad Company, therefore, is, in our judgment, a “public utility” as defined by the act and paragraphs (h) and (e) of section 18 are consequently applicable, at least, to the mortgaging, disposing of or encumbering by it of its leasehold interests in the railroads and fran-

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chises within this State before referred to, and to the issuance of bonds under a mortgage of such leasehold interests.

The leasehold interests in railroads located wholly within the State, and in the franchises to operate the same which proceed from a grant by the State, are clearly "property" within the State.

The mortgage under which the bonds are proposed to be issued includes this property. The bonds when issued will increase by the amount thereof the actual, as distinguished from the nominal lien or encumbrance, to which this property within the State of New Jersey is subject under the mortgage.

Our conclusions are:

(1) That the State has the power to make the approval of this Board a prerequisite to the issuance of the bonds to which this application relates, and

(2) That the State has, in the enactment of the provisions of the Public Utility Act before quoted and considered, exercised such power.

With the question of jurisdiction disposed of it remains to determine whether the approval applied for should be granted.

Section 18 (e) of the statute makes it the duty of this Board to approve of any proposed issue of bonds "when satisfied that the same is to be made in accordance with law and the purpose of such issue be approved by the board."

A question bearing upon whether the proposed issue is to be made in accordance with law has been suggested.

The bonds are proposed to be sold at not less than seventy (70) per cent. of their par value. If this is sanctioned they may be sold at less than eighty per cent. of their par value.

A statute of this State (P. L. 1906, ch. 331, p. 730) places a legislative limit of eighty (80) cents on the dollar on the sale of bonds of certain corporations which have "acquired

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or may hereafter acquire authority, permission or a franchise from the State or any municipality thereof to use or occupy any street, highway, road, lane or public place within this State.”

If this statute is applicable a sale of the bonds in question at less than eighty would not be “in accordance with law.”

Both in title and enactment the effect of the statute is limited to a “corporation of *this State*.” The Erie Railroad Company is not a corporation of this State. The limitation imposed by the statute does not, therefore, by the terms thereof extend to that company.

It has been suggested, however, that the statute indicates a general State policy, and that though in terms the limitation imposed by the statute is confined to “a corporation of this State” this Board ought, under the circumstances of this application to apply the general State policy so indicated to the applicant, though a corporation of another State.

To this suggestion we cannot accede.

The statute is restrictive of power. It cannot be taken to evidence a general State policy broader than its terms. If it had been the intent to establish a State policy applicable alike to the issuance of bonds by the indicated corporations of this State and by similar corporations of other states in so far as the issuance of bonds by these latter corporations might be subject to the legislative control of this State, such intent might reasonably be expected to be set forth in the statute.

Evidence of a general State policy applicable alike to certain corporations of this State and to similar corporations of other States can scarcely be found in a statute the restrictive operation of which is in express terms confined to corporations of this State.

This view finds support in the opinion of The Court of Errors and Appeals in *Island Heights and Seaside Park*

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Bridge Company vs. The Brooks & Brooks Corporation, 88 N. J. Law 613.

Whether the statute limits the powers of a railroad company of this State, whose railroad is not located in a public highway, but merely incidentally crosses public highways, we are not under this application called upon, nor do we, determine.

The merits of the application remain to be considered.

We are, under the Public Utility Act, called upon to determine whether the purpose of the proposed issue is such as should be approved.

Careful consideration of the record made at the hearings is persuasive of the conclusion that approval should be granted.

A proper capital purpose is to be served by the proposed issue. An increase in capital obligations will not result.

The outstanding underlying bonds for which the bonds now proposed to be issued are to be substituted bear interest at the rate of seven per cent. The substituted bonds bear interest at the rate of four per cent. It is true that these bonds may be disposed of at seventy, if more cannot be realized therefor. This, however, will in effect result merely in an interest rate of 5.71.

The record made convinces us that we would not be justified in prescribing as a condition of our approval a minimum sales-price in excess of seventy.

It is true that the proposed issue of bonds will, to the amount thereof, impose upon leasehold interests in railroads and franchises in this State an encumbrance to which they are not now subject, and that the purpose of the issue has on the surface, no direct relation to these roads. These leasehold roads, however, are part of a system, which must now be financed, as it is operated, as a whole.

Dated September 12th, 1916.

Union Bag and Paper Co. and Riegel Bag and Paper Co.—Merger.

No. 375.

IN THE MATTER OF THE APPLICATION FOR APPROVAL OF THE
MERGER OF THE UNION BAG AND PAPER COMPANY AND
RIEGEL BAG & PAPER COMPANY.

It appears that no restriction or lessening of competition or other lawful or undesirable condition will result from the consummation of the agreement; that all statutory requirements and formalities have been complied with and that the provisions of the agreement are fair and equitable to all persons interested.

The proposed merger accords with public policy as evidenced by legislative enactment.

Gilbert Collins, Thomas M. Day and Niel A. Weathers
for Petitioners.

Application is made for approval of an agreement of Merger, made August 22, 1916, between The Union Bag and Paper Company and Riegel Bag & Paper Company.

The Union Company manufactures and sells paper products; the Riegel Company is selling agent of The Union Company.

It is desired that The Union Company absorb the Riegel Company.

The present capitalization of The Union Company is \$27,000,000, divided into 270,000 shares of \$100 each, of which 110,000 shares, \$11,000,000 are 7% cumulative preferred stock and 160,000 shares, \$16,000,000 are common stock.

The present capitalization of Riegel Company is \$100,000, divided into 1,000 shares of common stock of the par value of \$100 each.

It is proposed to pay \$100,000 in cash for the stock of the Riegel Company. From the testimony the property of this Company is reasonably worth that sum.

Union Bag and Paper Co. and Riegel Bag and Paper Co.—Merger

It was testified that the physical property of The Union Company is reasonably worth \$14,228,136. The patents, trademarks, processes, etc., are, according to the testimony, of very great additional value.

There are outstanding two bond issues aggregating \$3,464,000; one of The Union Company for \$3,284,000, and one of Allen Brothers Company, assumed by The Union Company, for \$180,000.

The agreement provides for the issue of stock, all of one class, in the sum of \$10,000,000, divided into 100,000 shares of the value of \$100 each.

The holders of preferred stock are to receive new stock on the basis of 8/11 of one share for each share held and the holders of the common stock are to receive new stock on the basis of 1/8 of one share for each share held.

The proposed capitalization will result in the retirement of \$16,000,000 of stock, and the issue of stock *in lieu thereof to the amount of* \$10,000,000 all of which will be supported by tangible property reasonably valued at \$10,764,136.

The agreement was adopted by almost the entire stock of the companies. The only objection voiced was by the holders of a small number of shares of the preferred stock of The Union Company.

The same persons sent a telegram to this Board about hearing objecting to approval, but no reasons were assigned and no proof submitted. Nor did any person appear at the hearing in opposition to the application.

It appears that no restriction or lessening of competition or other unlawful or undesirable condition will result from the consummation of the agreement; that all statutory requirements and formalities have been complied with and that the provisions of the agreement are fair and equitable to all persons interested. A substantial and proper reduction of capitalization results. The proposed merger ac-

Union Bag and Paper Co. and Riegel Bag and Paper Co.—Merger.

CORDS with public policy as evidenced by legislative enactment. No reason appears for withholding approval.

A certificate of approval will issue.

Dated October 2nd, 1916.

CERTIFICATE.

Application being made to the Board of Public Utility Commissioners, by The Union Bag and Paper Company and Riegel Bag & Paper Company, corporations organized and existing under the laws of the State of New Jersey, for approval by the Board of a merger of said corporations, as required by Chapter 19 of the Laws of 1913, approved February 19th, 1913, and the said application being accompanied by an agreement of consolidation and merger signed by the Vice President and Directors of The Union Bag & Paper Company, and the President and Directors of Riegel Bag & Paper Company, attested by the Secretaries thereof, and bearing the corporate seals of said corporations, and by the certificates required by the statutes of this State, the Board of Public Utility Commissioners now, after hearing, no reason to the contrary appearing.

HEREBY APPROVES the merger of The Union Bag & Paper Company and Riegel Bag & Paper Company.

Dated October 2nd, 1916.

Morris and Somerset Electric Co. vs. Borough of Madison.

No. 376.

IN THE MATTER OF THE APPLICATION OF THE MORRIS AND
SOMERSET ELECTRIC COMPANY REGARDING SERVICE BY
THE ELECTRIC DEPARTMENT OF THE BOROUGH OF MADISON
IN THE BOROUGH OF FLORHAM PARK.

ORDER.

Complaint having been made to the Board of Public Utility Commissioners by the Morris & Somerset Electric Company that the Borough of Madison is supplying electric service to the Borough of Florham Park without the consent of the said Borough of Florham Park and without the approval of this Board as required by law; the facts as alleged having been admitted by the Borough of Madison, and it appearing that the Morris & Somerset Electric Company can and will supply the parties in Florham Park being served by the Borough of Madison, the Board on this fourth day of October, Nineteen Hundred and Sixteen,

HEREBY ORDERS the Borough of Madison to discontinue on and after November 14th, 1916, the supply of electric service to any person or persons in the Borough of Florham Park.

This order shall take effect immediately.

Dated October 4th, 1916.

In re rates of fare—N. J. and Pa. Traction Co.

No. 377.

IN THE MATTER OF THE APPLICATION OF THE NEW JERSEY & PENNSYLVANIA TRACTION COMPANY FOR ADVANCE IN PASSENGER FARES AND READJUSTMENT OF FARE ZONES BETWEEN TRENTON, LAWRENCEVILLE AND PRINCETON.

The existence of a utility in any territory which furnishes satisfactory service is a sufficient ground for refusing permission to another utility to enter the same territory. This policy is of recent origin and construction of the petitioner's line in the territory served by another line took place at a time when it was the policy of the State to encourage and promote competition in the utility field as well as other fields of industry. To deny it a reasonable return because the State has changed its policy would be not only an exhibition of bad faith toward the petitioner but an act of injustice as well.

The Board finds that the present rates of fare are insufficient and do not afford a fair or reasonable return.

Frank S. Katzenbach, Jr., for the company.

Henry M. Hartman, for the City of Trenton.

Harvey T. Satterthwaite, for the Township of Lawrence.

Bayard Stockton, for Township and Borough of Princeton.

The New Jersey & Pennsylvania Traction Company operates a railway line between Trenton and Princeton. In 1913 it was insolvent and in that year its receivers, Alfred Reed and Sydney L. Wright, applied to this Board for an increase in the rate of fare between those cities. Ordinances at that time in existence in Princeton and Princeton Township establishing a fare of ten cents between Trenton and Princeton were revoked by agreement of the company and the municipalities and both the company and the municipalities

In re rates of fare—N. J. and Pa. Traction Co.

agreed to submit the determination of what a reasonable rate should be to this Board.

The Board in the report which it made upon that application found the value of the properties of the company to be over \$500,000 and said: "It cannot be claimed that a return of 6% on this base would be excessive or unreasonable" and concluded that "a net profit of \$30,000 over and above all expenses for operation, repairs and maintenance is amply warranted." It made a finding that the rate of fare of ten cents between Trenton and Princeton was insufficient and fixed "for an experimental period of twelve months beginning February 5th, 1913, a rate of fare for a continuous through trip between Trenton and Princeton, in either direction of fifteen cents."

The company at the hearing on the former application did not produce proof of the value of the Eureka Power Company property which it is testified is about \$21,500. Additions to capital account on the Princeton division since the report of the Board above referred to, were made to the amount of over \$50,000, so that the properties of the company at the beginning of the year 1914 were worth about \$575,000.

The evidence submitted on the present hearing shows that the net income of the company for the year 1913 after payment of taxes was \$18,794.50; for the year 1914, \$18,451.62 and for the year 1915, \$17,637.81. The experience of two years at the fifteen cent fare demonstrates that the company is still earning less than the return which the Board determined it was entitled to in 1913.

It appears that a change of schedule was made in 1915 reducing the service from half hourly to three quarter hourly trips, and that the saving effected thereby amounted to about \$3,000 per annum. This, however, would not substantially change the situation in regard to the insufficiency of revenue.

In re rates of fare—N. J. and Pa. Traction Co.

The petitioner asks that the rate of fare for the whole trip from Trenton to Princeton be fixed at twenty cents and that the following fare zones be established (1) Trenton to Sand Pit 2.97 miles; (2) Sand Pit to Lawrenceville 3.10 miles; (3) Lawrenceville to Province line 3.10 miles; (4) Province line to Princeton 3.39 miles.

The application is opposed by the city of Trenton, the Borough of Princeton, Princeton Township and Lawrence Township. The counsel for Trenton frankly admits that the petitioner is not securing a fair and reasonable return. It is objected, however, to an increase of the rate of fare that a competing line charges a fare of fifteen cents between Trenton and Princeton and that this petitioner should not be permitted to charge a higher rate than its competitor. This objection ordinarily is an important one, but it must give way when proof of insufficiency of revenue to yield a fair return on its property is adduced by the applicant, and the rates it is proposed to establish do not appear to impose excessive charges for the service afforded.

It should be noted in this connection that since 1913 substantial improvements have been made in the company's property. New cars of enlarged capacity have been put in operation and the track has been materially bettered. Operating for the greater part of the distance between Trenton and Princeton on private right of way the company is able to afford and appears to provide an interurban service in which large and heavy cars are operated at a comparatively high speed. This involves a heavier capital expenditure and a greater expense for maintenance than would be the case where lighter rolling stock is operated at a slower speed. The speedy operation of the new equipment is a detail of the service advantageous to the public and must be given due consideration in considering the question of the reasonableness of the company's charges.

In re rates of fare—N. J. and Pa. Traction Co.

It does not appear that the charges which the company proposes to make effective are unreasonable as compared with similar service afforded by high speed interurban lines operating equipment of the type used by the petitioner.

It is further contended that this Board has adopted the policy recognized by all Public Utility Commissioners in the United States that competition between utilities is not to be encouraged because of the inevitable ultimate double burden which must be assumed by the public in the maintenance of the dual system of utilities. Undoubtedly the existence of a utility in any territory which furnishes satisfactory service is a sufficient ground for refusing permission to another utility to enter the same territory. But the policy referred to is of recent origin, and construction of the petitioner's line in the territory served by another line took place at a time when it was the policy of the State to encourage and promote competition in the utility field as well as all other fields of industry. To deny it a reasonable return because the state has changed its policy would not only be an exhibition of bad faith toward the petitioner, but an injustice as well.

The Board finds that the present rates of fare upon the Princeton division are insufficient and do not afford a fair or reasonable return and fixes a rate of fare for a continuous through trip between Trenton and Princeton in either direction of twenty cents. The Board also fixes the following fare zones between Princeton and Trenton in each of which a fare of five cents may be charged:

Trenton to Sand Pit.
Sand Pit to Lawrenceville.
Lawrenceville to Province line.
Province line to Princeton.

It is the opinion of the Board that in the application of the above fares, going in either direction, the fare between

N. J. and Pa. Traction Co.—In re transfer of capital stock.

any point in Princeton and in the Town of Lawrenceville and between any point in Lawrenceville and any point in Trenton should not exceed ten cents.

In its order of January 13, 1913, in which the Board fixed the rates to be charged on this line, it required that the company should sell bunches of tickets or block tickets, not less than twelve tickets in a bunch or block, at the aggregate price of one dollar, each of said tickets to be good for passage between Lawrenceville and either Trenton or Princeton in either direction. It is the judgment of the Board that the sale of these tickets should be continued. The Board therefore will approve the fixing of the fare zones between Princeton and Trenton, and the charge of a fare of five cents in each of the fare zones as heretofore noted, with the understanding that this will not result in the discontinuance of the sale of bunches of tickets or block tickets at the rate of twelve tickets for one dollar, but that the same shall be sold and accepted for transportation as heretofore.

The Board will permit the filing of a schedule consistent with the above.

Dated October 10, 1916.

No. 378.

IN THE MATTER OF THE APPLICATION OF THE NEW JERSEY AND PENNSYLVANIA TRACTION COMPANY FOR AUTHORITY TO TRANSFER 10,000 SHARES OF CAPITAL STOCK TO PENNSYLVANIA-NEW JERSEY POWER AND LIGHT COMPANY.

Frank S. Katzenbach, Jr., for the petitioner.

N. J. and Pa. Traction Co.—In re transfer of capital stock.

Application is made under Section 19 of Chapter 195, Laws of 1911, which, in part, provides:

"Nor shall any public utility as herein defined incorporated under the laws of this state sell any share or shares of its capital stock or make or permit any transfer thereof to be made upon its books, to any corporation, domestic or foreign, result of which sale or transfer shall be itself or in connection with other previous sales or transfer shall be to vest in such corporation a majority in interest of the outstanding capital stock of such public utility corporation unless authorized to do so by the Board."

The petitioner is a public utility incorporated under the laws of the State of New Jersey. It has outstanding 10,000 shares of capital stock, all of which is sought to be transferred under this application.

The Pennsylvania-New Jersey Power and Light Company is a Pennsylvania Corporation.

At the hearing, in response to the question:

"And what are the purposes of its existence?" referring to the Pennsylvania Company, it was answered:

"Well, the primary object, of course, is to get a more condensed holding of the various properties controlled by the syndicate and for the question of financing their bonds in a better form."

It further appeared that the properties owned by the Pennsylvania Company are electric light companies.

"Q. Will it operate the property in New Jersey?

"A. The idea, of course, would be, I assume merely by some lease arrangement or something of that sort, and still continue the operations of the company under the name of the Traction Company as heretofore."

Mr. Wright testified:

"The object is to control some five or six corporations, which have been separate and distinct, in one company, which company is to issue bonds and stock, the bonds to be as near as possible first mortgage bonds. They will be absolutely first mortgage bonds on the Pennsylvania properties, but they cannot, of course, be first mortgage bonds on the New Jersey properties. They can only be collateral trust, so far as New Jersey property is concerned. They will be collateral trust by the

N. J. and Pa. Traction Co.—In re transfer of capital stock.

ownership of the stock of the New Jersey & Pennsylvania Traction Company, and that is the purpose.”

It will be seen that the result of the transfer of this stock will be to vest the ownership of the New Jersey Company in the Pennsylvania Company, and to pledge its securities to the payment of the liabilities of the latter company. Securities are to be forthwith issued against the stock and bonds of the New Jersey Company, and this Board will practically lose supervision of its capitalization, so long as its stock is in the hands of the Trustee under the mortgage of the Pennsylvania Company, and the bonds perhaps widely distributed.

In view of the fact that the New Jersey Company, in 1913, without the approval of this Board, sold to the Bucks County syndicate, the owners of both the New Jersey and Pennsylvania Companies, the properties, or some of them, now owned by the Pennsylvania Company for \$439,445.80 less than the book value thereof, without a reduction of capitalization or securing permission to set up a “Property Abandoned” account, the matter of capitalization and transfer of stock becomes vital.

The Board will, therefore, withhold authorization and the petition is hereby ordered **DISMISSED**.

Whether the Board should give its approval to a transfer of stock, the only purpose of which is to secure its control by a holding company to support additional issues of securities, which will indirectly be a burden on the New Jersey Company, is not now decided.

The Board would also want to be satisfied that the result of such transfer would not be to so intermingle the management and liabilities of the New Jersey and Pennsylvania properties as to make separate operation and supervision practically impossible.

Dated October 10, 1916.

N. J. and Pa. Traction Co.—Sale of securities, etc.

No. 379.

IN THE MATTER OF THE APPLICATION OF THE NEW JERSEY AND PENNSYLVANIA TRACTION COMPANY FOR PERMISSION TO OPEN UPON ITS BOOKS A "PROPERTY ABANDONED" ACCOUNT, AND FOR THE APPROVAL OF THE SALE OF CERTAIN OF ITS SECURITIES.

REPORT.

Frank S. Katzenbach, Jr., and George Wharton Pepper,
for petitioner.

On May 1, 1913, petitioner transferred to the group of men who own all of its stock and bonds certain securities then owned by it, valued at and carried on its books at \$439,445.80, without the approval of this Board. In consequence of such transfer there appeared upon the books of your petitioner a deficit of \$439,445.80. The Board's accountant directed attention to the situation and recommended that it be corrected.

The present application seeks formal approval of the transfer of the securities in question, and permission to set up a "Property Abandoned" account and to make the entries necessary to adjust the accounts. The holders of its stock agree to surrender 5,000 shares of stock of the par value of \$500,000 to balance the diminution of property.

On condition that 5,000 shares of capital stock of said company are surrendered for immediate cancellation, the Board will approve the transfer of the securities mentioned in paragraph four of the petition in this case, and will approve the opening of a "Property Abandoned" account. The said account to be opened and the entries there-

N. J. and Pa. Traction Co.—Transfer capital stock.

in to be made under the direction of the Board's Statistician, Mr. Henry S. Lyon.

Dated December 12, 1916.

No. 380.

IN THE MATTER OF THE APPLICATION OF THE NEW JERSEY & PENNSYLVANIA TRACTION COMPANY FOR AUTHORITY TO TRANSFER UPON ITS BOOKS 5,000 SHARES OF ITS CAPITAL STOCK TO THE BUCKS COUNTY INTERURBAN RAILWAY COMPANY.

REPORT.

Frank S. Katzenbach, Jr., and George Wharton Pepper,
for petitioner.

Approval has been given of the application of this petitioner for permission to open upon its books a "Property Abandoned" account, and of the sale of certain of its securities, to the amount of \$439,445.80, to the "Bucks County Syndicate," the holders of all of petitioner's capital stock, upon condition that such syndicate surrender for cancellation 5,000 shares of such capital stock of the par value of \$500,000; leaving issued and outstanding 5,000 shares of capital stock of the par value of \$500,000.

The present application seeks permission to transfer upon petitioner's books the remaining 5,000 shares of its capital stock to the Bucks County Interurban Railway Company.

Previously application was made for permission to transfer the 10,000 shares above mentioned to Pennsylvania-New Jersey Power and Light Company. On October 10,

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1916, the Board filed its conclusions and denied the application.

Thereafter, a new plan was submitted in the present application which met, so far as it is possible, the objections to approval pointed out in the Board's report.

Inasmuch as the capitalization of New Jersey and Pennsylvania Traction Company has been adjusted to accord with the Board's views, and the independent operation of the company will not be altered or its financial status disadvantageously affected by the transfer of its stock, we conclude that no reason appears for withholding approval of the transfer upon its books of the stocks in question. A certificate will issue.

Dated December 12, 1916.

No. 381.

LAKESWOOD & COAST ELECTRIC COMPANY

VS.

ATLANTIC COAST ELECTRIC LIGHT COMPANY.

The petitioner seeks to exclude the respondent from entering and serving a territory which it is legally permitted to enter and in which the petitioner thinks it may later desire to serve, although not for some years.

The public policy of the State is to regulate public utility corporations so that the public interest will be conserved rather than encourage destructive competition, and if the present matter involved approval of a municipal ordinance or contract in which either of the said companies were given increased privileges; or involved additional license or permission to use public streets, which would be subject to the approval of this Board, the position of the petitioner would carry much weight. This, however, is not the case, and the petition is dismissed.

Lakewood and Coast Electric Co. vs. Atlantic Coast Electric Light Co.

Adrian Riker and Carroll P. Bassett, for the complainant.

Robert H. McCarter and Frank Durand, for the respondent.

The Lakewood & Coast Electric Company (successor to the Point Pleasant Electric Light and Power Company) is supplying Spring Lake, the Township of Wall and several other small municipalities in Monmouth County, with electric current for light, heat and power. The Atlantic Coast Electric Light Company is likewise engaged in the same business and in the same territory. In some parts of the territory, each company serves to the exclusion of the other. In other parts, the companies are in direct competition.

The complaint makes two charges against the respondent company: (1) that it has in the past and is continuing the practice of erecting in the said territory pole lines and wires to an extent which is entirely unwarranted so far as business served therefrom is concerned; (2) that it furnished the Spring Lake Golf Club, free of charge, an underground service in addition to making an extension of their pole line between 1,200 and 1,300 feet to supply such service.

It will be noted that the complaint is against voluntary extensions made by the Atlantic Coast Electric Light Company to supply consumers in different portions of Wall Township; not a question of rates. Counsel for the complainant frankly stated in his opening "that the application really * * * tends to bring up the question of the competition between these two electric light companies, *that is the real question involved.*"

The proofs, however, dealt with the matter of extensions.

Whatever power this Board has in the premises, must be found in the statute.

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The particular section of the Public Utility Act applicable to extensions reads:

"17. The Board shall have power, after hearing, upon notice, by order in writing to require every public utility as herein defined:

(c) To establish, construct, maintain and operate any reasonable extension of its existing facilities, where, in the judgment of said Board such extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same, and when the financial condition of the said public utility reasonably warrants the original expenditure required in making and operating such extension."

The general policy of making extensions in new territory and the development of business therein is a matter, primarily, for the judgment of the Board of Directors, and managers of each company. Where there are no legal prohibitions, it is and ought to be left to the management of the company to say how far it is willing to help the growth and development of any community which it naturally ought to serve. It very often happens that the making of extensions in the first instance shows small returns, but within a reasonable time such extensions become most profitable. The fact that they do not show an immediate return of legal interest or more is not a good argument in favor of this Board interfering with the development of such public service. Under the section quoted, it is when a utility company refuses to make proper extensions, or imposes unjust terms and conditions upon those desiring the service that this Board ought to interfere. In such cases it is the province of this Board to ascertain whether the desired extension is reasonable and practicable; whether it will furnish sufficient business to justify the construction and maintenance, and whether the financial condition of the public utility reasonably warrants the expenditure.

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None of these questions is involved in the present controversy.

In this case the petitioner seeks to exclude the respondent from entering and serving a territory which it is legally permitted to enter, and in which the petitioner thinks it may later desire to serve, although not for some years. From petitioner's testimony, it is doubtful if this Board could, under the provisions of the statute, order it to extend its lines into this territory.

The public policy of the state is to regulate public utility corporations so that the public interest will be conserved rather than encourage destructive competition, and if the present matter involved the approval of a municipal ordinance or contract in which either of the said companies were given increased privileges; or involved additional license or permission to use public streets, which would be subject to the approval of this Board, the position of the petitioner would carry much weight.

That, however, is not the case and the complaint will be dismissed. An order will so enter.

Dated October 23, 1916.

ORDER.

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof.

IT IS ORDERED that the complaint in this proceeding be and it is HEREBY DISMISSED.

Dated October 23rd, 1916.

Verona vs. Public Service Ry. Co.

No. 382.

BOROUGH OF VERONA

VS.

THE PUBLIC SERVICE RAILWAY COMPANY.

A tentative plan of operation of cars of the Public Service Railway Company on Bloomfield Ave., between Newark and Caldwell was put into effect. This eliminated a number of stops.

It is obvious that frequent stops slow up the operation of cars and where any number of stops can be eliminated the inevitable result is that the cars take less time to get passengers to their destination.

In this case it appears that the lawfully constituted governing bodies of the municipalities in which the plan is in effect are unanimous in their demands that through traffic on the Bloomfield Avenue line shall be subject to all local stops. The Board will respect this sentiment and disapprove the skip stop plan of operation.

C. H. Walker, D. H. Slaybeck and W. H. Williams, for Verona.

Charles F. Kocher, for Bloomfield.

Spalding Frazer, for City of Newark.

John H. Van Order, for Caldwell.

F. L. Chrisman, in person.

Charles H. Hartshorne, for Montclair.

A. R. Denman, for Board of Street and Water Commissioners of Newark.

L. D. H. Gilmour, for Public Service Railway Company.

In April, 1915, the Borough of Verona and numerous residents thereof complained that during the rush hours of seven to nine in the morning and five to seven in the even-

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ing passengers on the Public Service Railway Company were frequently delayed for an unreasonable time by reason of the Verona cars being obliged to stop at every block while passing through Newark and Bloomfield and asked for an investigation into the propriety and feasibility of ordering the said railway company to run through cars to Verona, and that all trolley cars marked Caldwell make one stop every fourth block while in and passing through Newark and Bloomfield. While action on this petition was pending, complaint was made by Francis L. Chrisman against the same company charging the trolley service furnished on the "Montclair-Caldwell" cars known as the Bloomfield line, to be slow, improper and inadequate.

It was stipulated that these two complaints be carried along together. The Chrisman complaint was finally absorbed in the Verona investigation (page 114 of testimony).

The petitioners later amended their petition by asking "that all trolley cars marked Caldwell, Summer, Bay Avenue and Montclair shall make one stop every fourth block while in and passing through the City of Newark on Bloomfield Avenue, Towns of Bloomfield, Glen Ridge and Montclair."

On February 18, 1916, the petitioners asked that the original petition on file be amended to read "that all trolley cars marked Bay Avenue, Bloomfield, Montclair and Caldwell shall, on reaching Broad Street and Central Avenue, continue down Broad Street to Vanderpool Street, where they can make a turn and return back from Broad Street to Bellville Avenue."

This last petition charged that "to continue to send the aforesaid cars down the Mulberry Street route, to the Pennsylvania Railroad station necessitated the loss of five to fifteen minutes of running time during the rush hours."

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The Town of Bloomfield, by resolution duly adopted June 7, 1915, requested this Board to deny the application of Verona that the railway company be ordered that the cars operated by said company on Bloomfield Avenue make but one stop every fourth block while passing through the Town of Bloomfield. Later it consented to certain stop eliminations.

Montclair entered its protest against any local change in trolley stops; and the Board of Street and Water Commissioners of the City of Newark expressed themselves as opposed to having the skip-stop plan put in operation on the Bloomfield line within the city limits.

After numerous hearings and the taking of the testimony of many witnesses as to the elimination of certain stops in said respective municipalities, there was a great change in feelings and attitudes of these parties. The Borough Council of Caldwell passed a resolution endorsing the skip-stop plan for the operation of trolley cars on Bloomfield Avenue from Newark to Caldwell. Verona passed a similar resolution saying that the proposed skip-stop plan was acceptable provided the other municipalities through which the Verona cars pass co-operate in the elimination of unnecessary stops. Montclair agreed to the elimination of stops on Mission Street, Seymour Street, Maple Place, Frances Place and Walden Place. Glen Ridge agreed to the elimination of the stop known as High Street. The Town of Bloomfield agreed to the elimination of four stops.

The Public Service Railway Company expressed its willingness to endeavor to relieve the situation and offered to institute the "skip-stop car" plan of operation if this Board approved it. In this situation the Board suggested that a stipulation be entered into between all the municipalities, definitely naming the streets to be omitted, and then to give a trial of the skip-stop plan. To this Mr. Den-

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man and Mr. Tries, representing the Street and Water Commissioners of the City of Newark, acquiesced. At this posture of affairs the Board suggested that a tentative program or schedule be made and a sixty day trial be given the proposed skip-stop plan of operation, with leave to the City of Newark to make objection at the expiration of that time if it believed it necessary or desirable.

The formality of a written stipulation was not entered into by any of the parties, but the authorities of Newark, Bloomfield, Glen Ridge, Montclair, Verona and Caldwell approved of the plan as hereinbefore recited.

After fully and carefully considering all the suggestions made by the representatives of the municipalities and of the Public Service Railway Company, a tentative plan was put into effect on April 10, 1916, with the approval of this Board, on that part of the Bloomfield line between Branch Brook Park, Newark, and the Caldwell loop, eliminating the following street intersections. *East bound*, Gould Place, Smull Avenue, Forest Avenue, (Caldwell); Oak Grove Road, Edgewood Road, Falls Road, Forest Avenue, (Verona); So. Prospect Street, Sunset Avenue, Malvern Street, Pompton Pike, Rockledge Road, Walden Place, St. Luke's Place, Seymour Street, Hartley Street, Mission Place, Hermon Street, High Street, Berkeley Place, Brookside Place, 19th Street, 18th Street, 13th Street, 11th Street, 7th Street and 5th Street. *West bound*, 4th Street, 6th Street, 8th Street, 10th Street, Heckel Street, Edison Street, Berkeley Avenue, Watsessing Avenue, Berkeley Place, Nelson Street, Conger Street, High Street, Seymour Street, Maple Place, Midland Avenue, Frances Place, Lloyd Place, Pompton Turnpike, Elmwood Place, Hillcrest Avenue, Clairmont Place, Gould Street, Forest Avenue, (Verona); Oak Grove Road, Forest Avenue, (Caldwell); Smull Avenue and Cleveland Street.

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At street intersections not designated in the schedule, stops were made to take on and let off passengers by east bound or west bound cars indicated by signs attached to poles.

It is obvious that frequent stops slow up the operation of cars and where any number of stops can be eliminated the inevitable result is that the cars cover their routes more quickly and take less time to get passengers to their destination. The plan meant a saving of time for every person who rides on the cars.

On July 28th, the Board of Street and Water Commissioners of Newark presented a copy of a resolution adopted at its regular meeting requesting the discontinuance of the said skip-stop plan on Bloomfield Avenue within the limits of the City of Newark.

This reopened the whole matter and the same was set for hearing on Wednesday, September 20th, at Newark, and all municipalities affected notified. On the day last mentioned several petitions, largely signed, were presented both for and against the continuance of the skip-stop plan, but the duly authorized authorities of each of the municipalities who had previously assented to the trial of the skip-stop plan entered their unqualified protest against it. Mr. Williams, speaking for Verona, said, "We are perfectly willing, as far as we are concerned, to have the skip-stop system to Verona, *but not through Verona.*" This seemed to be the attitude of each municipality.

The Board is greatly disappointed that in its endeavor to solve this vexatious question, there was an utter lack of co-operation from the various municipalities affected. However, the lawfully constituted governing bodies of the said cities, boroughs and towns being unanimous in their demand to make through traffic on the Bloomfield Avenue line subject to all local stops, the Board will respect that

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sentiment and disapprove the said tentative schedule known as the skip-stop plan of operation.

The Public Service Railway Company will, therefore, resume and continue hereafter, with respect to the stops of its cars on Bloomfield Avenue and the manner of making such stops, the practice which was in effect immediately prior to April 10, 1916. The schedule now in effect is not to be affected by this change.

Dated October 23rd, 1916.

No. 383.

IN THE MATTER OF THE COMPLAINT OF THE CITY OF TRENTON
AGAINST THE TRENTON AND MERCER COUNTY TRACTION
CORPORATION REGARDING PAVING OF STUYVESANT AVENUE.

The public utility act gives the Board authority to require every public utility subject to its jurisdiction to "comply with any municipal ordinance relating thereto."

Where this power is invoked, before any order is issued, it should clearly appear that a duty is imposed on the utility by the ordinances, and that performance of the duty may be more promptly and effectually obtained by the Board's order than through the direct exercise by the municipality of any power reserved to it.

The Board's power to require a public utility to furnish safe, adequate and proper service is not dependent upon the terms of municipal ordinances.

H. M. Hartman, for the City of Trenton.

Rankin Johnson and *Edw. M. Hunt*, for the company.

This matter involves a complaint of the City of Trenton that paving along Stuyvesant Avenue has not been maintained and the city asks the Board to order the company

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to live up to its obligations under its franchise. The complaint alleges that Section 8 of an Ordinance of June 27, 1904, provides,

"That said Company * * * upon Stuyvesant Avenue shall lay its rails to conform with the grade of such streets and shall pave inside the rails and between the tracks of its railway with good Belgian block stone known as No. 1; and on the outside of the rails with like Belgian block stone, not less than twelve inches in length, laid transversely to the lines of the rail, all to be laid on a five-inch concrete base, which need not be replaced if kept in good condition for a period of fifteen years."

It is stated by the City, and admitted by the company that the tracks were laid and the street was paved in accordance with the requirements of the franchise. The complaint alleges that the Belgian blocks "became loosened, uneven, unequal and irregular because of poor or inferior workmanship, or the use of poor and inferior material in constructing the under structure upon which such Belgian blocks were laid. That because of the instability of the under structure the blocks between the ties sunk below the level of those resting upon the ties, creating thereby a series of humps and hollows in the pavement, and an undulatory surface on that part of the street paved by the company, and which it is obligated to keep in 'good condition.' "

The answer of the company denies that the Belgian blocks have become loose, uneven, irregular, etc., and further denies "that the humps and hollows in the pavement are due to the instability of the under-structure of the blocks, except as such instability has been caused by excavations made since such pavement was laid and accepted." The company denies also that the conditions existing are such as to interfere with the use of the street for vehicular traffic and denies that whatever conditions exist are, in any way, due to the neglect or failure of the Trenton & Mercer County Traction Corporation to keep and observe the duties im-

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posed upon it by its ordinances. The company admits that the pavement is somewhat uneven but not to the extent alleged. With its answer the company submitted copies of approvals issued by the proper City authorities accepting the pavement of the street complained of, this approval being dated December 6, 1904. On December 7, 1904, the Street Committee of the Common Council also passed a resolution approving and accepting the paving.

At the hearing in this matter which was held on June 27th and continued on July 6th, testimony was submitted accompanied by exhibits showing that from time to time numerous cuts had been made by the City Water Department and by the Sewer Department (or by plumbers acting under the authority of the Sewer Department) for the purpose of installing new water and sewer services. It is the contention of the company that such sinking of the pavement as has taken place is due entirely to the cutting of the pavement for these purposes, that this work was in no way under the control of the company and that it could not be held responsible for any damages caused thereby.

It appears that the condition of this pavement was the subject of more or less controversy between the company and the City in 1912 at the time the street was being repaved, and at that time it appears that the City agreed to repair all of the pavement between the tracks over the several ditches that had been constructed under permits granted by the city authorities.

The physical condition of the tracks and paving was testified to by two witnesses, Mr. Abram Swan, Engineer of Streets, for the city, and Mr. Winslow B. Ingham, an Engineer in the employ of the Commission, having special knowledge of street railway work. Both Mr. Swan and Mr. Ingham agreed that the track itself was in good order. They also agreed in stating that the stretcher courses along the

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outside of the rails were considerably higher than the rails at numerous points. Photographs were submitted showing these conditions. From the testimony and from the photographs it would appear that the rails have never been even with the stretcher courses laid on the outside. It does not appear that the rails have sunk since this paving was done and the only conclusion is that the stretcher courses were laid at an elevation higher than the elevation of the rail at the time the paving was done. These stretcher courses, it should be noted, were laid by the contractors for the paving. It is clear, however, from the testimony and from the photographs that the substructure between the ties has sunk in a number of places and this would indicate imperfect construction when this substructure was laid. The photographs also show that the paving near the special work at the end of the double track near Whittlesey Road is very uneven and has materially deteriorated since it was laid.

The Public Utility Act (Chapter 195, N. J. P. L. 1911) gives this Board authority to require every public utility subject to its jurisdiction to comply with "any municipal ordinance relating thereto." It seems to the Board that in vesting it with this power the legislature intended that the Board should give due consideration to duties specifically imposed upon public utilities by municipal ordinances, that it should, when the public interest appeared to demand it, require conformity with such duties, but that it was not intended that municipalities should cease to make reasonable efforts on their own behalf to secure such conformity.

In a case where this power is invoked it seems to the Board before any order is issued it should clearly appear that a duty is imposed on the utility by the ordinance, and that performance of the duty may be more promptly and effectually obtained by the Board's order than through the

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direct exercise by the municipality of any power reserved to it. If the meaning of the ordinance is doubtful, if the facts submitted are not sufficient to warrant exercise by the Board of its authority, or if the municipality has a power of direct action which it has refrained from exercising, the Board would hesitate to issue an order requiring compliance with the ordinance.

This, of course, has no relation to the exercise by the Board of its power to require a public utility to furnish safe, adequate and proper service. The Board's power to do this is not dependent upon the terms of municipal ordinances. If the condition of the paving between and alongside the rails of a street railway is such that the safety or convenience of the traveling public is impaired the Board would not hesitate to issue an order to the company requiring it to make such repairs or replacements as would remove the danger and inconvenience. It appears from the testimony, and the Board finds and determines, that upon Stuyvesant Avenue where the double track begins at Whittlesey Avenue, the conditions are such that the Trenton and Mercer County Traction Corporation does not furnish safe, adequate and proper service, and the Board finds and determines that safe, adequate and proper service to passengers boarding and alighting from cars of said corporation requires resurfacing of the part of the track adjacent to the switch and the switch itself with new ballast placed under the ties, and that the portion of the pavement in the one hundred feet of track eastward from Whittlesey Avenue, where the paving is now rough and uneven should be replaced. An order requiring this to be done will be entered.

With the exception of the foregoing, it does not appear that the safety or convenience of the traveling public requires the issuance of an order by the Board. The question presented to the Board is whether the Board shall direct

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compliance with a municipal ordinance, in order that those riding in automobiles and other conveyances along Stuyvesant Avenue may travel with the greater comfort which would come from a smoother pavement. It is contended that under the municipal ordinance the company may be at this time required to repave between its tracks and rails and along each side thereof in order that this may be accomplished.

This ordinance contains the following:

"Section 8. That said company * * * upon Stuyvesant Avenue, shall lay its rails * * * and shall pave inside the rails and between the tracks * * * and on the outside of the rails with like Belgian block stone * * * all to be laid on a five-inch concrete base, which need not be replaced if kept in good condition for a period of fifteen years.

"Section 9. That whenever and as often as any paved street, or any part thereof, through or upon which the tracks of the said company are laid, is ordered repaved by the duly constituted municipal authorities, and such work has been completed and accepted, then the said company shall become liable to pay forthwith the entire cost and expense of repaving that part of such street lying inside the rails, between the tracks and for a distance of two feet outside of each outer rail of the tracks of said company, if double track, and three feet outside of each outer rail, if a single track, upon the presentation to it of a certificate of the cost and expense of such work, properly authenticated by the City Engineer.

"Section 10. That whenever and as often as any unpaved street, or any part thereof, through or upon which permission is granted to said company to lay its tracks, is ordered paved by the duly constituted municipal authorities, and such work has been completed and accepted by them, then the said company shall forthwith pay to the Treasurer of the City of Trenton, the entire cost and expense of paving or repaving that part of said street lying inside the rails, between the tracks of said company, and for a distance of twelve inches outside of each outer rail of said tracks upon presentation to the said company of a certificate of the cost and expense of such work, signed by the City Engineer."

Between Sections 8 and 9 of the above there appears to be some conflict. By Section 8 the company need not replace its part of the pavement if the same is kept in good

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condition for a period of fifteen years. By Section 9 if a paved street is ordered repaved and the work completed and accepted the company becomes liable to pay forthwith the entire cost and expense of replacing its part of the pavement. There is nothing in Section 9 which provides that if the street on which the tracks are laid is repaved before the expiration of fifteen years the company, because of the provision of Section 8, shall be relieved of payment for its portion of the pavement. But the eighth section must be considered in this connection. If the condition of a pavement beyond the company's tracks becomes such that its replacement is necessary, while the portion for which the company is responsible is kept in good condition, the right of the city to tear up this portion of the pavement and replace it at the company's expense before the expiration of fifteen years would be questionable. If this portion of the pavement was not kept in good condition there would be no question of the company's duty to repave or pay for repavement, provided the bad condition was due to its failure to use reasonable efforts to keep the pavement in repair.

It is the opinion of the Board that the pavement between the company's tracks and outside its rails on Stuyvesant Avenue is not in good condition and that this is due in part to the city's action in making openings in the pavement for water and sewer services. It is a moot question whether if these openings had not been made the pavement would be now in such condition that in view of Section 8 of the ordinance its replacement could be required. It seems to the Board that the present condition of the pavement is one for which neither the city nor the company can wholly escape responsibility. It is probable that the pavement as originally laid between the company's tracks should have been of better construction and that if it had been it would be in better condition today. On the other hand the openings in

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the street for water and sewer connections have caused deterioration for which responsibility cannot be reasonably placed on the company.

The case does not appear to be one in which the Board would be justified in issuing an order to the company requiring compliance with the municipal ordinance. Indeed an order to comply with the ordinance would be ineffectual because the duty imposed upon the company by such ordinance is to pay for the paving. It does not require it to do the paving. The municipality loses no right because of the Board's decision.

If it insists that the pavement is in such condition that its replacement is necessary; that this condition is the fault of the trolley company and that the company should bear the entire cost and expense of repaving, it may order the repaving done and collect the cost from the company. It seems to the Board that under the circumstances an agreement between the city and the company might be reached concerning the cost of such replacement. This Board has no authority to prescribe the terms of such an agreement or to enforce its terms. If, however, a joint responsibility is recognized by the parties in interest and they so desire the Board will afford them the assistance of its engineering department in an attempt to arrive at a mutually satisfactory basis of settlement.

The petition for an order requiring compliance with the terms of the ordinance will be dismissed. An order will so issue.

Dated October 24th, 1916.

ORDER.

This case being at issue, upon complaint and answer on file, and having been duly heard and submitted by the

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parties and full investigation of the matters and things involved having been had, and the Board having on the date hereof, made and filed a report in which the Board

FINDS AND DETERMINES that the Trenton and Mercer County Traction Corporation fails to furnish safe, adequate and proper service, and to keep and maintain its property and equipment in such condition as to enable it to do so, the Board

HEREBY ORDERS AND DIRECTS the said Trenton and Mercer County Traction Corporation to re-surface on Stuyvesant Avenue in the City of Trenton, that part of its track which is adjacent to the switch at Whittlesey Avenue and the switch itself, with new ballast placed under the ties and

FURTHER ORDERS AND DIRECTS the said Trenton and Mercer County Traction Corporation to replace, for a distance of one hundred feet eastward from Whittlesey Avenue on Stuyvesant Avenue, the pavement inside the rails and between the tracks and along the outside of the rails of the street railway of the said corporation, where the paving is now rough and uneven, the work to be completed within sixty days from the effective date of this order.

Except in so far as the Trenton and Mercer County Traction Corporation is subject to this order, the petition in this proceeding is hereby dismissed.

This order shall become effective November 15, 1916.

Dated October 24th, 1916.

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No. 384.

IN THE MATTER OF THE COMPLAINT OF THE CITY OF TRENTON
AGAINST TRENTON AND MERCER COUNTY TRACTION COR-
PORATION REGARDING TRACK AND PAVING ON PENNING-
TON AVENUE.

The Board finds that the condition of the track and roadbed of the Trenton and Mercer County Traction Corporation on Pennington Ave. between Frazier Street and the northerly side of Prospect Street is such that the said corporation fails to furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as will enable it to do so.

An order will be entered requiring the Company to replace ties and re-align and resurface the track and put the paving in proper condition of repair.

C. E. Bird, for the City.

Rankin Johnson and *Edw. M. Hunt* for the Company.

This matter involves a complaint of the City of Trenton that the Trenton and Mercer County Traction Corporation has failed to put in order its track on Pennington Avenue between Frazier Street and the old city line and to replace the pavement along this same length.

The complaint alleges that the track operated by the Trenton and Mercer County Traction Corporation in Pennington Avenue between Frazier Street and the City line has

“deteriorated considerably, the ties having become rotten and the rails in a very dilapidated and wornout condition, so that in many places the rails have sunken considerably. This condition of the rails and roadbed generally has caused the pavement and condition of Pennington Avenue to become hazardous to travel on said highway.”

The City Commissioners state that they propose to repave Pennington Avenue between Frazier Street and the city line

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and feel that it would be a waste of money to repave the avenue while the roadbed of the street railway is in such condition.

The answer of the company is to the general effect that the track and roadbed is not wornout and that it does not intend to repair or rehabilitate its track between the points mentioned. The company contends that it is only required to maintain in repair the existing cobble stone pavement between the rails and tracks and for a distance of three feet outside of each outer rail and that in the year 1912 it was released from the obligation to maintain the cobble stone pavement outside of the track in consideration for replacing such cobble stone pavement with two lines of Belgian block.

The condition of track and roadway along the street referred to was testified to by Mr. Abram Swan, Engineer of Streets for the City and by Mr. Winslow B. Ingham, an Engineer employed by the Commission. In addition to the oral testimony, photographs were submitted showing the condition of the track and paving at various points. Attention is called particularly to photograph No. 4, showing poor alignment of track which can only have come from either movement of the ties or the loosening of the fastenings between the rails and the ties. Photograph No. 6, which is intended to show condition of paving, shows also a bad condition of some of the joints. Photograph No. 8, showing the crossing with the East Trenton Railroad, shows some bad joints and some very bad paving. All of the photographs indicate a very bad condition of the paving and photograph No. 11 shows that some of the paving blocks became loosened to such an extent that they have actually disappeared. Photograph No. 12 also shows some deteriorated joints.

Testimony submitted by Mr. Ingham gave the exact location of a large number of the defective joints and the actual

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location also of a number of places where the paving was bad. From the testimony with regard to the condition of track and paving, the conclusion is reached that the entire track with its associated paving in the section from Frazier Street to, and beyond Prospect Street, requires reconstruction. The portion of the track from Prospect Street to the city line has already been largely rehabilitated and will not be referred to in this report.

Testimony was submitted showing that the operation of cars over the portion of the track under consideration resulted in considerable discomfort to passengers, due to the deteriorated joints and other irregular portions of the track. The obligation of the company with regard to the paving is found in an ordinance passed March 18, 1898, by the Township Committee of Ewing Township, recorded on page 22 of the ordinance book, as follows:

"Section 4. The said Company shall pave inside the rails and between the tracks of its railway with one line of good Belgian block stone along the inner side of every rail and with cobble stone of uniform size between the lines of said block stone and between the tracks and on the outside of the outer rails with cobble stone not less than 18", all to be bedded in good coarse sand.

"Section 5. That said Company shall lay its rails to conform to the grade of such street and keep in good repair the pavement inside the rails and also on each side thereof for a distance of two feet if a double track and three feet if a single track.

"Section 6. Said Company shall also pave at the intersection or crossing of any other railway tracks the whole distance between crosswalks, which may be taken up by said Company to the construction of repairs of its tracks, shall be relaid by the said Company and at all crossings of streets or the gutters thereof which the tracks of said Company shall pass over. A proper culvert covered with the stone the whole width of the streets shall be laid at the cost or expense of the said Company and shall be constructed under the direction of the Surveyor of said township; and all track shall be located and laid under the direction of said township committee, subject to the approval thereof."

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The track in Pennington Avenue beyond Frazier Street lies in what was in 1898 a portion of the Township of Ewing but is now included within the City of Trenton. It will be seen from the above extracts that the duty upon the company is a continuing one with regard to the repair and maintenance of the paving between the rails. The contention of the company is that the track, without material repair, could be used for two or three years longer and that during such period they should not be required to make any extensive repairs of track or pavement. The testimony of the engineers, however, is conclusive in the opinion of the Board, to the effect that the track is in very bad condition, that at numerous joints and other portions of the track the ties have become rotten and do not now properly support said joints and tracks. Testimony confirmed by the photographs submitted, shows that the paving in many cases is in extremely bad condition and it is the conclusion of the Board that steps should be promptly taken to put this section of track in good operating condition.

The Board finds and determines that the condition of the track and roadbed of the Trenton and Mercer County Traction Corporation on Pennington Avenue between Frazier Street and the northerly side of Prospect Street is such that the said Trenton and Mercer County Traction Corporation fails to furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as will enable it to do so.

An order will be entered requiring the company to replace the rotten ties and re-align and re-surface the track and to put the paving in proper condition of repair.

Dated October 24th, 1916.

Rates and Rules—Commonwealth Water Co.

ORDER.

This case being at issue, upon complaint and answer on file, and having been duly heard and submitted by the parties and full investigation of the matters and things involved having been had, and the board having on the date hereof made and filed a report in which the Board

FINDS AND DETERMINES that the Trenton and Mercer County Traction Corporation fails to furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so, the Board

HEREBY ORDERS AND DIRECTS the Trenton and Mercer County Traction Corporation to replace on Pennington Avenue between Frazier Street and the northerly side of Prospect Street, in the City of Trenton, the ties under its track which have become rotten; to realign and resurface its tracks between such points and put the paving in good condition inside the rails and between the tracks and along the outside of the rails of the street railway of the said corporation, where the paving is now rough and uneven, the work to be completed within sixty days from the effective date of this order.

This order shall become effective November 15, 1916.

Dated October 24, 1916.

Rates and Rules—Commonwealth Water Co.

No. 385.

IN THE MATTER OF THE APPLICATION OF THE COMMONWEALTH
WATER COMPANY FOR APPROVAL OF PROPOSED NEW
SCHEDULE OF RATES AND RULES.

If the territory served by the Commonwealth Water Company should be treated as claimed by the company, as one district with uniform rates established throughout, then this Board should not pass judgment on the schedule submitted unless the municipality of West Orange is included therein, and all the necessary and proper details concerning the water company's property therein are considered in this hearing and the Town of Irvington is legally placed in the same group. At this time one is excluded purposely by the company and the other claims to be excluded by virtue of an existing legal contract.

The schedule submitted with the rules thereto attached is disapproved and permission to file the same refused.

Carroll P. Bassett, for the company.

Edward G. Pringle, for the City of Summit.

W. E. Turton, for the Town of Irvington.

William Byrd, for the Township of Millburn.

F. O. Runyon, for the Township of South Orange.

The Commonwealth Water Company was formed, during the past year, by a consolidation of the Clinton Water Company, supplying the Town of Irvington; the Mountain Water Company, supplying Summit; the West Orange Water Company supplying West Orange, and took over by purchase the water properties of the Commonwealth Water and Light Company which was supplying the Borough of New Providence and portions of the Townships of Springfield, Millburn and South Orange. The proposed schedule was filed on March 31, 1916, and amended May 17, 1916, as

Rates and Rules—Commonwealth Water Co.

a result of testimony brought out at the first hearing in the matter.

West Orange, although served by said water company was expressly excepted from the schedule of rates, and the Town of Irvington, which is now being furnished with water by virtue of a written contract entered into between the Clinton Water Company and the Town of Irvington which does not expire until May 1, 1918, protests against any change in the schedule of rates which would in anywise differ from existing rates under its contract.

Summit favors a full inquiry as to the reasonableness of the rates proposed and is willing to accept the same, provided it is demonstrated to the satisfaction of this Board that the same are fair and reasonable to the City of Summit considered as a unit. Mr. Runyon assumed the same attitude with respect to South Orange.

To add to the difficulties of a satisfactory agreement, all of the municipalities which were represented at the hearings were led to expect a substantial reduction in water rentals. Summit expected a reduction and Irvington was expecting the meter rates to be reduced substantially twenty per cent. provided the assessed value of the taxable property of the water company within the limits of the town was not raised. A reduction of practically ten per cent. had already been granted and in effect, but further changes or modifications were refused, except as embodied in the schedule now under consideration.

Mr. Bassett in a letter to Mr. Stanley (pages 139 and 140 of testimony) says:

"The meter rates charged to private consumers will be reduced substantially. The reduction which is estimated in excess of ten per cent. will go into effect on October 1, 1915."

And on page 11 of testimony, he says:

Rates and Rules—Commonwealth Water Co.

"The rates for water to private consumers would be reduced from fifteen to twenty per cent. provided the town (Irvington) would agree with us upon our old schedule of taxes; that was the basis of my proposition."

The same witness speaking with regard to Irvington on page 163 of testimony says:

"I will say that on this 2897 (consumers), under the amended schedule as filed, there is shown to be a reduction of \$452.43 for the quarter ending September 30, 1915, and when we add to that, sixty-five cents per meter for 2897 or \$1,873.05 we get a total of \$2,325.48, practically a reduction on the bills which totalled \$14,843.12 under the old schedule which is equivalent to 15.67 per cent. That is the basis of our contention that we have made a substantial reduction, not only to the majority of our customers, which we have shown in detail, but we have made a very radical reduction in the aggregate."

On page 4 he says:

"In addition to that, the schedule as filed is pretty generally throughout the system a rather radical reduction of rates to private consumers."

We have analyzed the proposed new rates on Irvington and this results as follows:

2/3 of the present consumers now pay about one-third of the income.

The first 435 customers are below the old minimum and below the present minimum and there would, therefore, be no change in the charge.

82 customers paid a quarterly bill of \$2.00 and would now pay a bill of \$2.13.

147 customers paid \$2.03 each and would now pay \$2.18 each.

138 customers paid \$2.25 each per quarter and would now pay \$2.36 each.

129 customers paid \$2.48 each and would now pay \$2.54 each.

125 customers paid \$2.70 each and would have to pay \$2.72 each per quarter.

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The above accounts for 1,056 customers out of a total of 2,897.

Of *all* the customers who consume up to 2,000 cubic feet per quarter, the revenue under the old schedule was \$5,090.36 per quarter and under the new schedule is \$5,071.59 per quarter, making a net decrease for all of the customers in moderate sized houses of \$19.04 per quarter.

From all of the customers up to 2,721 in number who consume water up to 5,800 cubic feet per quarter, the revenue under the old schedule was \$1,155. Revenue under the new schedule is \$1,073, so that for the first 3,721 customers there is a net decrease in the revenue of the company for the quarter of \$318.59.

This does not appear to be a very large or radical reduction in rates.

The proposed schedule and rules also provide for a flat service charge of \$15 for coming into the property line with a three-quarter inch or smaller pipe and proportionately larger charges for larger pipe. This is called a "tapping fee" and is a direct charge to the consumer of a part of the installation costs in the street. Such a practice was expressly disapproved in the matter of the complaint of *Gilmore vs. Hackensack Water Company*. (See p. 138 of this volume).

The rule as to repurchase of water meters now owned by the consumer is not approved as to the details therein incorporated.

If the territory served by the Commonwealth Water Company should be treated, as claimed by the company, as one district with uniform rates established throughout, then this Board should not pass judgment on the schedule submitted unless the municipality of West Orange is included therein and all the necessary and proper details concerning the water company's property therein, are considered in this

Rates and Rules—Commonwealth Water Co.

hearing, and the Town of Irvington legally placed in the same group. At this time one is excluded purposely by the company and the other claims to be excluded by virtue of an existing legal contract. In this situation, considering the testimony, exhibits and reports before us, we are unable to find whether or not the Commonwealth Water Company would receive more than a fair return on the property used and useful in supplying water for the said district.

In this connection it should be stated that while valuations were fixed by this Board on certain of the properties constituting the Commonwealth Water Company for purposes of readjusting and the re-issuing of outstanding securities, the said values, made as they were in an ex parte proceeding, and especially as to intangibles, are not conclusively binding in any valuation for rate making purposes in a litigated proceeding in which such valuation is attacked by one who was not a party to such ex parte proceeding.

Mention should also be made that this Board does not look with favor on any attempt to adjust the rates to be charged by a public utility company on a bargain or dicker between the municipality and the utility company based on an agreement as to what shall be or shall not be the assessed valuation of the company's property for taxing purposes. The State Constitution provides that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value." If there is any improper or unjust assessment levied against the company, the Tax Act provides proper and ample method of relief.

In view of the unusual conditions hereinbefore pointed out by the exclusion of West Orange and the refusal of Irvington at the present time to come under any general schedule of rates, the schedule submitted with the rules thereto attached, is disapproved, and permission to file the same refused.

Dated November 20, 1916.

Howard E. Case vs. Boonton Electric Co.

No. 386.

HOWARD E. CASE

VS.

BOONTON ELECTRIC COMPANY.

The practice of requiring a moderate deposit is held to be not unreasonable. The complaint that interest is not paid held to be well founded.

Deposits to assure payment of service accounts are in the nature of "forced loans." By this practice the utility is not required to assume undue risk of losses. The consumer should not have imposed upon him the duty of giving guaranty of prompt payment, and, also, be out of the use of the money and any earning thereof.

In the present case, five per cent is held to be a reasonable rate of interest.

Thomas J. Hillery, for the company.

Complainant alleges that the respondent company requires him to make a deposit of five dollars in order to secure service at his home, that others of no greater responsibility and credit are not required to make a deposit, and that the company declines to pay interest upon the amount so deposited.

In re rules of *Easton Gas Works, et al.*, Reports N. J. Utility Com., Vol. 2, p. 393, decided February, 1914, this Board held that it is not unreasonable to require a deposit, moderate in amount, to assure the payment of bills. We see no reason for departing from the principle then decided.

In the same case the Board said:

"Question may be raised whether confining the imposition of the advance deposit to consumers newly contracting for service, and exempting earlier consumers therefrom, so long as they do not fall in arrears, is not unduly or unjustly discriminatory.

"The Board is not able to find that the imposition of the rule on those newly subscribing for service is unduly or unjustly discriminatory, at

Howard E. Case vs. Boonton Electric Co.

least until demonstration of their promptness and regularity in payment entitles them to ask the return of the advance deposit and to the same extension of credit as is now extended to old subscribers not in arrears.

* * *

"So long as the rule does not appear to work an undue or unjust discrimination it will not be set aside as unduly or unjustly discriminatory or preferential. The issue may fairly be raised, however, whether, after adequate demonstration on the part of the consumer of his financial reliability, a public utility avowedly according credit to reliable consumers may not be justly required to refund an advance deposit, or apply the same in liquidation of bills due. There seems little warrant in equity for the indefinite retention of such deposits, even though interest thereon be allowed. It savors altogether too much of a forced loan."

From the record before us, we conclude that the practice of the Boonton Electric Company requiring a moderate deposit is not unreasonable, and that there is no evidence of failure to apply such rule fairly and without undue preference.

The complaint that no interest is paid, however, appears to be well founded.

As above stated, deposits to assure payment of service accounts are in the nature of "forced loans." By this practice the utility is not required to assume undue risk of losses. The consumer should not have imposed upon him the duty of giving guaranty of prompt payment, and, also, be out of the use of the money and any earning thereof. The company has the use of the fund so accumulated. The consumer becomes creditor to the amount so held.

It is quite the universal practice of utilities of this state to pay interest on such deposits. In the case of Boonton Electric Company, 5% appears to be a reasonable rate. The amounts involved are usually small, and it would, therefore, be unreasonable and impose too great a burden on the utility to require it to compute the interest at frequent intervals or to send out checks for small sums.

Paterson for extension of East 24th St., across Erie R. R. tracks.

Under all the circumstances, we conclude that a reasonable rule, in this regard, for adoption by Boonton Electric Company, is one providing for the payment of interest at 5 per cent. per annum on all deposits held by it to secure the payment of bills for metered service, interest to be computed not oftener than once a year, and payable to consumer, or his representative, upon application at the company's office, no interest to be paid if service is discontinued within twelve months from date of taking service. When a depositor ceases to be a patron, or establishes his credit in advance thereof, the company should immediately refund the deposit, less unpaid bills.

Dated November 28, 1916.

No. 387.

IN THE MATTER OF THE APPLICATION OF THE CITY OF PATERSON FOR PERMISSION TO LAY OUT EAST TWENTY-FOURTH STREET, IN SAID CITY ACROSS THE TRACKS OF THE NEW YORK, SUSQUEHANNA & WESTERN RAILROAD.

There is no opening over the tracks of the railroad company between Twenty-second Street and Twenty-seventh Street. The community affected is a growing one. There is apparent need for the crossing sought.

The Board concludes that the prayer of the petition should be granted.

Randal B. Lewis, for City of Paterson.

Duane E. Minard, for railroad company.

The City's petition requests "permission to lay out East Twenty-Fourth Street in the City of Paterson, across the tracks of the New York, Susquehanna & Western Rail-

Paterson for extension of East 24th St., across Erie R. R. tracks.

road," in accordance with a plan annexed to said petition.

The application is made under section 21 of Chapter 195, Laws of 1911, which provides:

"No highway shall be constructed across the tracks of any railroad company at grade, * * * so as to make a new crossing at grade, * * * without first obtaining therefor permission from the board."

East Twenty-Fourth Street and Seventeenth Avenue cross each other at right angles at the point where the right of way of the railroad company intersects same. The tracks diagonally cross both streets almost in the middle of the street intersection. For some years Seventeenth Avenue has been recognized as a crossing and has been planked its full width and protected by gates on both sides of the tracks. East Twenty-Fourth Street on the easterly side of the tracks has likewise been protected by gates. The planking of the crossing is so constructed that any person may use the street on the easterly side of the tracks. On the westerly side of the tracks, however, East Twenty-Fourth Street is not guarded by gates and the crossing planking does not extend far enough to the southward to render use of the street safe and convenient to travel. The City desires the extension of the planking so that persons may with safety enter and leave East Twenty-Fourth Street west of the tracks.

The railroad company acquired its right of way at this point in 1871.

There was put in evidence a map showing a layout of this section of the City, showing Monmouth Street, now East Twenty-Fourth Street, at substantially its present location. This map was dated December 30, 1868, and was filed in the Passaic County Clerk's office January 4, 1869.

Whether this street was laid out and dedicated prior to the construction of the railroad tracks, it is now not neces-

Paterson for extension of East 24th St., across Erie R. R. tracks.

sary to determine. It is admitted by both sides that East Twenty-Fourth Street as presently existing has been an open highway for many years; that the public has used it as such; and conveyances have been made and buildings erected with reference to the lines of such highway.

It is not necessary, as urged by the respondent, that the highway be laid out as such by act of surveyors according to the statute. A public highway may be established by uninterrupted use and enjoyment by the public of the road as a highway for not less than twenty years, or by dedication by the owner of the land for use as a highway.

We conclude, therefore, that East Twenty-Fourth Street is a public highway in the City of Paterson.

If it has no legal existence as a highway over the tracks of the railroad company, should permission be granted for such crossing? The testimony shows that there is considerable use of the street by both pedestrian and vehicular traffic. On the east side there is no undue interruption to such travel, but on the west there is a ditch. Further, the physical characteristics are such as to mislead a traveler into the belief that there is a continuation of the highway over the tracks which has resulted in several accidents to vehicles.

Mr. Maybury, one of the Board's Inspectors, testified:

"The portion of the city of Paterson involved in this situation with respect to the crossing is a purely residential part of the town, and the houses in the community are comparatively new, being part of a rapid development in that section during the past ten years to my knowledge. Seventeenth Avenue is an improved highway carrying considerable travel, especially automobile travel. East Twenty-Fourth Street north of the track is improved to the planking line of the right of way of the railroad. East Twenty-Fourth Street is a dirt surface road with cinder surface immediately south of the right of way, and extending to a line of the southerly line of the present buildings used as a garage located on the southwest corner. At the intersection of East Twenty-Fourth

Paterson for extension of East 24th St., across Erie R. R. tracks.

Street and Seventeenth Avenue the crossing is fully planked and on the southerly line the planking is in line with the inside line of the sidewalk. West of East Twenty-Fourth Street on Seventeenth Avenue the planking from about the center line of the tracks to the easterly line of East Twenty-Fourth Street is not quite in line with the inside line of the sidewalk, if the sidewalk was continued across East Twenty-Fourth Street. While at the crossing investigating conditions I noticed what I would term a fair amount of travel on East Twenty-Fourth Street north of Seventeenth Avenue. Some of the travel turned into Seventeenth Avenue to the east, some to the west. There was no travel that I noticed from East Twenty-Fourth Street going in either direction over the tracks. East Twenty-Fourth Street on the southerly side is improved with respect to cement curbing, and guttering, and sidewalks, cement sidewalks, on the easterly side, the sidewalk extending to the right of way line of the railroad. The portion of East Twenty-Fourth Street south of the tracks is planked and is used for travel along East Twenty-Fourth Street. This I noted by wheelmarks by wheels, marks of wheels on the highway at the planking, on the planking. The portion, possibly about two-thirds of the approach to the railroad tracks on the southerly side is not open. In line with the portion of East Twenty-Fourth Street south of the tracks, which can be used for vehicular travel, is a ditch, on the top of which is grass and weeds and to travel going in a northerly direction on East Twenty-Fourth Street there is nothing there to indicate that the highway is not in practically the same condition as the other portion with the exception of the grass and weeds just mentioned. At the intersection of the two streets are gates. Seventeenth Street is protected both sides. East Twenty-Fourth Street one side. Owing to this unusual condition at a railroad crossing where a street is partly used by travel and gates protecting three of the approaches and not the remaining approach, in my opinion, presents an extremely dangerous condition and one, that in my opinion, requires remedying, either by proper protection, namely, by gates, or the highway south of the tracks blocked to travel."

There is no opening over the tracks between Twenty-Second Street and Twenty-Seventh Street. The community affected is a growing one. There is apparent need for the crossing sought.

If the application is granted, it will not establish a wholly new street crossing, but will merely involve the extension of the present crossing to permit travel to safely leave and

Paterson for extension of East 24th St., across Erie R. R. tracks.

enter East Twenty-Fourth Street to the west of the railroad tracks.

In view of all of the circumstances the Board concludes that the prayer of the petition should be granted, and a certificate of permission to lay out the highway over the railroad track will issue.

At the hearing, the question of the protection to be afforded at the crossing was the subject of examination and discussion. The respondent company insisted that to protect East Twenty-Fourth Street on the westerly side of the tracks would require an additional man to operate gates for East Twenty-Fourth Street west of the tracks.

On this point Mr. Maybury testified:

"The situation presented here with respect to the location of the highways is practically the same condition with respect to directions of streets, angles, and so forth, as we find at Park Avenue and Twenty-Second Street; the gates at which point are operated and taken care of by one man, who in addition must be extremely careful with respect to travel at that point on account of the large number of trolley cars traveling east and west on Park Avenue. If the situation is to be taken care of by gates, instead of operating the gates from the ground as now existing, the towerman, gates operated from a tower, would have a full view of all approaches, and a full view of the vehicular and pedestrian travel coming in all directions, in the four directions to the crossing. The situation, the similar situation at Park Avenue requiring gates to be operated from a tower, and in my opinion the gate situation could be taken care of in a similar manner. There are three tracks running diagonally across the intersection of the two highways. Some of these trains are express trains and run at a rapid rate of speed. The third track, the one on the easterly side or northerly side is a siding and used as such in connection with movements in the Broadway yard. With respect to the views, the whole situation at all corners is of such a nature, and so deemed by the railroad company, requiring protection. The high board fence, to travel north on East Twenty-Fourth Street, if that fence were continued there, would prohibit, or preclude views of westbound trains, and owing to the angle of vision you would have a fair view of eastbound trains. But taking the whole situation as one, and to me with respect to protecting crossings it is one crossing, all approaches should be properly protected."

Paterson for extension of East 24th St., across Erie R. R. tracks.

The Board is of opinion that the crossing should be properly planked and protected by the installation of a gate or gates on the west side of the tracks to guard East Twenty-Fourth Street, and that they can be operated by the towerman or gateman who now operates the gates on Seventeenth Avenue, thus entailing no additional outlay for labor.

Dated November 28, 1916.

CERTIFICATE.

This application having been duly heard, and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board of Public Utility Commissioners

HEREBY GRANTS permission for the construction of East Twenty-Fourth Street, in the City of Paterson, at grade, over the tracks of the New York, Susquehanna & Western Railroad Company.

Dated November 28, 1916.

This order was appealed to the Supreme Court by the Erie Railroad Company. At the time of printing the matter is before the Court.

Stone Harbor Water Co.—Sale of plant to Stone Harbor.

• No. 388.

IN THE MATTER OF THE APPLICATION OF THE STONE HARBOR
WATER COMPANY FOR APPROVAL OF SALE OF ITS PLANT TO
THE BOROUGH OF STONE HARBOR.

Held: That jurisdiction has not been conferred upon the Board to pass upon the question whether the conduct of a municipality and its voters in agreeing to purchase a public utility was wise.

In a case in which it appeared that the price at which the property was sold to the community was such that a fraud had been perpetrated upon it the Board would feel that its duty required withholding of approval.

The values fixed in this case are not such as to justify interference by the Board.

Lewis Starr, for Stone Harbor Water Company.

Joseph Beck Tyler, for objectors.

Objection to approval of this application was made but it developed that, unless the Board took the position that its jurisdiction was such that it could pass upon the question of discretion exercised by the municipality in agreeing to and the voters in approving the purchase by the municipality, the objection would not be pressed before the Board.

The Board's jurisdiction over the matter involved is defined in subdivision (h) of Section 18 of the "Public Utilities Act," approved April 21, 1911, which provides:

"No public utility as herein defined shall, without the approval of the board, sell, lease, mortgage or otherwise dispose of or encumber its property franchises, privileges or rights, or any part thereof; * * *."

The Board is of opinion that jurisdiction has not been conferred upon it to pass upon the question of whether the conduct of the municipality and the voters was wise. In a case in which it appeared that the price at which the property was sold to the community was such that a fraud had

Stone Harbor Water Co.—Sale of plant to Stone Harbor.

been perpetrated upon it, the Board would feel that its duty would require it to withhold its approval.

In the case under consideration, it appears that the figures as to the value of the physical property were fixed by agreement of three appraisers, one selected by the company, one by the municipality and the third by the two appraisers so selected. The values as estimated by Mr. Vosbury, acting for the objectors, and Dr. Betts, the Board's expert, do not differ so greatly from that fixed by the appraisers as to justify the Board in interfering with the sale of the plant.

Since public notice of the election on the question of purchase by the municipality was given several times, public action was taken at a season when practically all the residents and property owners of the Borough had notice of it and the vote at the election was so overwhelmingly in favor of the purchase, the Board is of the opinion that it should not intervene and withhold its approval.

A certificate of approval will issue, subject to the following conditions:

1. That the proceeds of the sale be used for the purpose of retiring all the company's stock and bonds, and in satisfaction of all the outstanding liabilities of the company.
2. That the company surrender to the Borough of Stone Harbor all of its franchises, and
3. That the corporation be dissolved.

Dated December 8. 1916.

CERTIFICATE.

Application being made to the Board of Public Utility Commissioners, by the Stone Harbor Water Company, by petition in writing, for approval of the sale of its system of water works and water supply plant, located in the Bor-

Stone Harbor Sewer Co.—Sale of plant to Stone Harbor.

ough of Stone Harbor, Cape May County, New Jersey, to the Borough of Stone Harbor, for the sum of Fifty-five thousand, nine hundred sixty-three dollars and twenty-two cents (\$55,963.22), which petition is by reference thereto herein, made part hereof.

The Board of Public Utility Commissioners, after hearing and investigation, no reason to the contrary appearing,

HEREBY APPROVES the sale of the system of water works and water supply plant of the Stone Harbor Water Company to the Borough of Stone Harbor, as prayed for in said petition, subject to the following conditions:

1. That the proceeds of the sale be used for the purpose of retiring all the company's stock and bonds, and in satisfaction of all the outstanding liabilities of the company.

2. That the company surrender to the Borough of Stone Harbor all of its franchises, and

3. That the corporation be dissolved.

Dated December 8, 1916.

No. 389.

IN THE MATTER OF THE APPLICATION OF THE STONE HARBOR
SEWER COMPANY FOR APPROVAL OF SALE OF ITS PROPERTY
TO THE BOROUGH OF STONE HARBOR.

Lewis Starr, for Stone Harbor Sewer Company.

Joseph Beck Tyler, for objectors.

The report filed upon this date upon the application of the Stone Harbor Water Company for approval of the sale of its property to the Borough of Stone Harbor should be

Mrs. Oliver J. Berryman vs. Delaware River Water Co.

regarded as applying also to the application for approval of the sale under consideration. The same conditions will be imposed in the certificate of approval.

Dated December 8, 1916.

No. 390.

MRS. OLIVER J. BERRYMAN,

VS.

THE DELAWARE RIVER WATER COMPANY.

Frank B. Jess, for the complainant.

T. Yorke Smith, for the Company.

Complaint was made to the Board by Mrs. Oliver J. Berryman that she could not obtain an extension of service from The Delaware River Water Company to supply her residence, located on Laurel Street, approximately two hundred and ten feet from the corner of Spruce Street, in the Town of Delanco.

This complaint was referred to the Board's Inspector who investigated the conditions and reported thereon.

Hearing was held on Tuesday, December Twelfth, One Thousand Nine Hundred and Sixteen, of which hearing the complainant and the water company were notified and at which both appeared. The representative of the water company stated that the company would abide by any order of the Board issued in the matter.

After consideration, the Board is of the opinion that it would be just and reasonable to both parties in interest

Accident—D., L. and W. R. R.—Kingsland.

for the water company to extend its main two hundred and ten feet to reach Mrs. Berryman's property and that Mrs. Berryman should assure to the company a revenue of Twenty-one dollars per annum until such time as further customers can be served through the same main, when the guarantee should be re-adjusted.

The Board, therefore, ORDERS The Delaware River Water Company, upon the conditions expressed above, to extend its main two hundred and ten feet to Mrs. Berryman's property and to supply water to the same.

This Order shall become effective January Third, Nineteen Hundred and Seventeen.

Dated December 12th, 1916.

No. 391.

IN THE MATTER OF THE ACCIDENT AT THE KINGSLAND STATION
OF THE DELAWARE, LACKAWANNA & WESTERN RAILROAD.

A situation of danger is presented at Kingsland Station for which the rules of the Company do not adequately provide. .

The rule governing the paralleling of trains cannot be observed if an unobstructed view of a station cannot be had in time for the engineer to get his train under control while moving toward a standing train.

The Board concludes that a precautionary signal for west bound trains indicating the presence of a train in the Kingsland Station zone, resulting in slow speed regulation of the west bound train emerging from the tunnel, would have prevented the accident in question.

James Maybury, Jr., for the Commission.

John L. Seager, for the Delaware, Lackawanna and Western Railroad Company.

Accident—D., L. and W. R. R.—Kingsland.

On November 28, 1916, as special passenger train No. 582 east bound on the Delaware, Lackawanna & Western Railroad had about stopped at Kingsland Station, passenger train No. 479 west bound approached the station at such speed as to prevent the engineer from stopping in time to avoid running into some passengers, waiting to board the east bound train, standing between the rails of the west bound track and on the platform between the east and west bound tracks.

The special train was for the exclusive use of several hundred employees of the Canadian Car Company between Kingsland and Hoboken and is not scheduled to leave Kingsland at any definite time. It usually left Kingsland Station at 6:30 p. m. and on the day of the accident the train was pulling into the Kingsland Station at that hour.

Train No. 479 is due to leave Hoboken at 5:45 p. m., and is scheduled to leave Kingsland at 6:18 p. m., and as the accident occurred at 6:30 p. m., it was twelve minutes late arriving at Kingsland.

Kingsland Station is located on the east bound side about 800 feet east of Ridge Road, at which point there is a highway bridge over the tracks. The station platform is 460 feet long. Its east end is 660 feet west of the Kingsland Tunnel, and between the Kingsland Tunnel and Ridge Road the track curvature is 2 degrees. There is a platform between the east bound track and west bound track, the crown of which is raised above the top of the rail. As there is no inter-track fence between the main tracks, passengers for the east bound trains could board either from the station or the west bound platform.

It seems that it was the practice of the majority of the employees of the Car Company, using the special train, in approaching the station to cross to the southerly side of the tracks by the highway over the tunnel, known as Valley

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Brook Avenue. The others were accustomed to take Pennsylvania Avenue, which runs north of the tracks and is cut off by the railroad at a point opposite the station. The latter route makes it necessary to cross both main tracks to reach the station building.

As train No. 479 approached Kingsland, the engineer being on the right hand side, was on the outer side of the curve and unable to see the platform between the tracks or the special train at the depot, until he emerged from the west end of the tunnel. No signal indication is provided to warn engineers approaching Kingsland on the west bound track that an east bound train is approaching or standing at the station. The rule of the company covering the non-parallelism of trains while a train is standing at the station is the only definite guide for the observance of caution by engineers approaching Kingsland on the west bound track. For east bound movements, the west bound trains operate an automatic signal located about 1,200 feet west of the Kingsland Station platform, giving notice that a west bound train is within the Kingsland station zone, which signal affords opportunity to stop in time to avoid paralleling the west bound train approaching or standing at the station. With such an indication at said point, the rule of the company covering the paralleling of trains can be properly observed. A similar precautionary signal is not installed for west bound movements, and if the engineer of train No. 479 had received such an indication as is provided for movements in the opposite direction, this train could have been under control before emerging from the tunnel and stopped before reaching the station platform.

The company's rule No. 111 regarding the paralleling of trains is as follows:

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"On double tracks a train must not run into or pass a station at which a passenger train is standing, unless signalled by the conductor of the standing train to do so."

An exception to such rule is contained in the employee's time table, permitting the paralleling of trains at stations where there is an intertrack fence. Said rule reads as follows:

"General rule No. 111 is applicable to all stations which are not provided with protection for handling passengers in opposite direction."

It is difficult for an engineer of a west bound train to observe the above rule as to paralleling of trains at the Kingsland Station because it is impossible for the engineer to get a view of the station. This is due to the proximity of the tunnel to the station and to the fact that the engineer's position on the outer side of the curve precludes a clear view of the station, which, as stated above, is located on the east bound side. There is a rule of the company as follows:

"Conductor of train at the station will supervise the movement of other approaching trains and protect passengers from injury."

Under this rule, the crew of the special train knowing of the physical conditions at Kingsland Station, time of arrival of train No. 479, that it was late, and that passengers were accustomed to boarding from the west bound platform, should have provided for some precaution in accordance with this rule, if it was possible to do so. They justify their failure to warn the west bound train on the ground that their own train had not come to a complete stop when the west bound train reached the station, thus giving them no opportunity to signal it. It seems to us that a situation of danger is presented, therefore, at Kingsland Station for which the rules of the company do not adequately provide. The rule governing the paralleling of trains cannot be observed if an unobstructed view of a station cannot be had

Accident—D., L. and W. R. R.—Kingsland.

in time for the engineer to get his train under control while moving toward a standing train. We believe that the limited view prevented the engineer from seeing the standing train when emerging from the tunnel.

Train No. 479 was running about 30 miles per hour through the tunnel. While this was a little faster than the ordinary rate, because of its being behind time, it is evident that the engineer operated his train as was his custom to make the station stop.

It appears that since the accident the special train is now loaded on a siding in the Car Company's yard. It is not likely, therefore, that an accident of the same gravity will again occur at the Kingsland Station. Nevertheless, the lack of either an intertrack fence or a northern boundary fence to prevent passengers from crossing the tracks to the station, and the custom of persons to approach the station in that manner and to board east bound trains from either side, creates a situation of danger, for which the railroad company cannot reasonably claim to be free from responsibility.

We conclude that a precautionary signal for west bound trains indicating the presence of a train in the Kingsland Station zone, resulting in slow speed regulation of the west bound train emerging from the tunnel would have prevented the accident in question. Such a signal should be installed east of the tunnel and should be of a similar character to that now installed west of the station for the opposite movement.

Dated December 18, 1916.

Long Branch Sewer Co.—Capital stock.

No. 392.

IN THE MATTER OF THE APPLICATION OF THE LONG BRANCH
SEWER COMPANY FOR PERMISSION TO ISSUE \$63,700 CAPI-
TAL STOCK.

Jacob Steinbach, Jr., for the company.

This petition was submitted on October 3, 1916, and asked for the approval of the issue of common stock in the amount of \$63,700.

The proposed issue is based upon an assumption by the company that the value in the plant of the sewer company is now in excess of the outstanding capitalization to that amount. The authorized capital stock is \$250,000, of which there is now outstanding stock in the amount of \$150,000. There is a mortgage upon the property in the amount of \$100,000, of which \$70,000 are issued and outstanding.

The property has been completely inventoried and appraised within the last few weeks. The present value of the land is placed at \$4,000. Unit prices developed have been decided upon after a careful study of prices.

The final estimate of the cost to reproduce the
physical property new is\$309,867
this including allowances for overhead charges
in the aggregate amount of 19.1. The accrued
depreciation is estimated at 19.6; which amounts
to 60,793
leaving the present value of physical property of 249,074

 Lehigh Valley R. R.—New crossing—Hillside Township.

To this should be added:

Materials and supplies\$1,130

Organization estimated at 2½% on
\$312,000 7,800

Cash 2,000

Total value as of Dec. 31, 1916.....\$260,004

Outstanding securities 220,000

Balance applicable for the issuance of new
securities\$ 40,000

The company paid no dividends for the first eleven years of its existence, during which time the earnings were put back into the property.

The calculations above show that the present value of property in excess of outstanding capitalization is \$40,000, and approval of the issuance of capital stock in the amount of \$40,000 will be authorized.

Dated December 19, 1916.

 No. 393.

IN THE MATTER OF THE APPLICATION OF LEHIGH VALLEY RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT AN ADDITIONAL TRACK AT GRADE OVER NORTH BROAD STREET IN THE TOWNSHIP OF HILLSIDE, UNION COUNTY, NEW JERSEY.

Stewart C. Pratt, for petitioner.

Donald McLean, for Township of Hillside.

Application was made by Lehigh Valley Railroad Company for permission to construct an additional track at

Lehigh Valley R. R.—New crossing—Hillside Township.

grade over North Broad Street in the Township of Hillside. The Township Committee objected because the company has neglected to respond to appeals for protection at two other crossings in the Township, namely, Long Avenue and Liberty Avenue. North Broad Street is adequately protected at all hours. No testimony was submitted in opposition to the application and no reason was assigned for refusal, except as above stated. We think these grounds are not sufficient to cause us to withhold approval, where it appears to be necessary and in the public interest that additional facilities be afforded.

Permission to construct the additional track will issue.

In consequence of the representations respecting protection at Long Avenue and Liberty Avenue, the Board has caused investigation to be made by an Inspector, who has reported that additional protection should be provided at such crossings. We are advised by the railroad company that the recommendations so made will be accepted and additional protection provided without delay.

Dated December 29, 1916.

CERTIFICATE

Application to the Board of Public Utility Commissioners by the Lehigh Valley Railroad Company, for permission to construct an additional track, at grade, across North Broad Street, in the Township of Hillside, Union County, New Jersey, having been duly heard, and the Board having on the date hereof made and filed a report containing its finding of fact and conclusions thereon, which report is hereby referred to and made a part hereof, said application being accompanied by a blueprint showing more particularly the location of said track, which blueprint and petition are, by reference thereto herein, also made part hereof,

W. J. and S. R. R.—Siding—Gloucester.

The Board of Public Utility Commissioners, after investigation and hearing, no reason to the contrary appearing,

HEREBY GRANTS permission for the construction of said additional track, at grade, as prayed for in said petition.

Dated December 29, 1916.

No. 394.

IN THE MATTER OF THE APPLICATION OF THE WEST JERSEY AND SEASHORE RAILROAD COMPANY FOR PERMISSION TO CONSTRUCT SIDING AT GRADE ON CHARLES STREET AND ACROSS WATER STREET, GLOUCESTER.

Permission to construct, operate and maintain a track or siding for the New York Shipbuilding Company in and along Charles Street and across Water Street, was granted by the municipality to the West Jersey and Seashore Railroad Company. The track is to cross the track of a street railway company. The street railway company should be required to look to the railroad company, only, to assume the obligation of the former and the railroad company, in turn, if the shipbuilding company will agree, should look to it to be indemnified therein.

James Buckelew, for the West Jersey and Seashore Railroad Company.

L. D. H. Gilmour, for Public Service Railway Company.

Charles Cogan, for Pennsylvania Shipbuilding Company.

The West Jersey and Seashore Railroad Company makes application to this Board for permission to lay a track in Charles Street and across at right angles, two tracks of the Public Service Railway Company running along Water Street, into the property of the Pennsylvania Shipbuilding

W. J. and S. R. R.—Siding—Gloucester.

Company. The track is required to provide freight facilities for the Shipbuilding Company which will connect with the Gloucester Branch track at a point south of Charles Street, from which point the track will run northerly on a curve to Charles Street, north of Walnut Street, thence along Charles Street and across Water Street.

The application is made under Section 21 of Chapter 195, Laws 1911, Public Utility Act, so called, and the acts supplemental thereto and amendatory thereof which provides:

"No highway shall be constructed across the tracks of any railroad company at grade, nor shall the tracks of any railroad company, street railway or traction company be laid across any highway, so as to make a new crossing at grade, nor shall the tracks of any railroad or street railway or traction company be laid across the tracks of any other railroad or street railway or traction company without first obtaining therefor permission from the Board, *provided, however*, that this section shall not apply to the replacement of lawfully existing tracks."

The City of Gloucester, the municipality in which Charles and Water Streets are located, has by ordinance passed May 2, 1916, and approved May 4, 1916, authorized and empowered the West Jersey and Seashore Railroad Company to lay and construct, operate and maintain a branch track or siding of its railroad to consist of a single track railroad, in, on and along Charles Street, from a point east of Walnut Street, westwardly along Charles Street, across Water Street into the property of the Shipbuilding Company as shown on plan annexed thereto and made part of said ordinance.

Hearing was held in this matter at Camden, July 13th, 1916, at Trenton, N. J., November 14th, 1916. Testimony was taken and arguments heard.

The Public Service Railway Company objects to the approval of the permission by this Board, unless and until the railroad company enters into the usual crossing agreement

W. J. and S. R. R.—Siding—Gloucester.

• with the railway company wherein the railroad company only should assume the obligations of construction, operation and maintenance of said crossing.

The railroad company, however, alleges that as between the railroad company and the Shipbuilding Company the track or siding in and along Charles Street and across Water Street, is the property of the Shipbuilding Company, laid for its benefit and hence the railway company should look to the Shipbuilding Company to assume the obligations of maintenance of said crossing.

The railway company, on the other hand, points out that the Shipbuilding Company is not a utility and has no right to lay tracks in the street, across, longitudinally or any other way, that the permission to construct, operate and maintain said track or siding was given by the municipality to the railroad company and therefore the railway company should be required to look only to the railroad company to assume all the obligations of the railway company thereof.

The Board has considered the matter and is of the opinion that in view of the fact that the Shipbuilding Company is not a utility and that the permission to construct, operate and maintain the track or siding in and along Charles Street and across Water Street was granted by the municipality to the railroad company that the railway company should be required only to look to the railroad company to assume the obligation of the railway company thereof, and the railroad company, in turn, if the Shipbuilding Company will agree, look to the Shipbuilding Company to be indemnified therein.

The Board has examined the agreements submitted by the parties and is of opinion that the agreement submitted by the railway company substantially covers the relations

W. J. and S. R. R.—Siding—Gloucester.

of the parties, and suggests that an agreement in substantially the form submitted be entered into.

The Board, therefore, will grant permission to the railroad company to lay a track in Charles Street to cross at right angles the tracks of the Public Service Railway Company running along Water Street, upon the railroad company properly assuming the obligations of maintenance with respect thereto.

Dated December 29, 1916.

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Complaint is made alleging failure of the Delaware and Raritan Canal Company to maintain a proper bridge at Albany Street, New Brunswick. The company denies any obligation to maintain the bridge. The burden of proof is held to rest upon the petitioner to establish the obligation. The Board holds such burden is not sustained. *Board of Chosen Freeholder of Middlesex County vs. Delaware and Raritan Canal Co., et al.,*p. 359

COMPETITION.

A water company refused to contract to furnish service in the territory of another company without consent of the Board and the Water Supply Commission. The Board holds that the residents of the district are entitled to a continuous supply of potable water and the community as such to fire service if ready and willing to pay for same and that such supply and service will not be afforded by company in the field. The Board will look favorably upon entry of another company having necessary legal rights. *Water Commissioners of Delawanna, District No. 2, vs. Yantacaw Water Co.,*.....p. 366

The existence of a utility in any territory which furnishes satisfactory service is a sufficient ground for refusing permission to another utility to enter the same territory. This policy is of recent origin and construction of the petitioner's line in the territory served by another line took place at a time when it was the policy of the State to encourage and promote competition in the utility field as well as other fields

of industry. To deny it a reasonable return because the State has changed its policy would be not only an exhibition of bad faith toward the petitioner but an act of injustice as well. *Application of the New Jersey and Pennsylvania Traction Co. for advance in passenger fares and readjustment of fare zones between Trenton, Lawrenceville and Princeton*p. 581

The petitioner seeks to exclude the respondent from entering and serving a territory which it is legally permitted to enter and in which the petitioner thinks it may later desire to serve, although not for some years.

The public policy of the State is to regulate public utility corporations so that the public interest will be conserved rather than encourage destructive competition, and if the present matter involved approval of a municipal ordinance or contract in which either of said companies were given increased privileges; or permission to use public streets which would be subject to the approval of this Board the position of the petitioner would carry great weight. This, however, is not the case and the petition is dismissed. *Lakewood and Coast Electric Co. vs. Atlantic Coast Electric Light Co.*,p. 540

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The Board will always assume jurisdiction over utilities under the public utility act. It will not hesitate to direct a utility to comply with the laws of the State, and to conform to the duties imposed upon it thereby, or the provisions of its own charter, but it will not assume such jurisdiction in a doubtful case. *Board of Chosen Freeholders of Middlesex Co. vs. Delaware and Raritan Canal Co., et al.*,p. 359

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LEASES.

Board declines to pass upon a lease of one public utility to another until it appears that the terms of the lease are reasonable and proper, and that a lease is necessary and desirable in preference to merger and consolidation. *Application for approval of lease by Middlesex and Monmouth Electric Light and Power Co. of some of its property to Monmouth Lighting Co.*,p. 365

Application for approval of lease dismissed, it seeming probable that in the course of another year or so conditions may change sufficiently so that consolidation may be brought about. The Board believes that leasing of the properties should be resorted to only after it is apparent that no other and more satisfactory method of bringing the properties together is possible. *Application of the Middlesex and Monmouth Electric Light, Heat and Power Company for permission to lease property to Monmouth Lighting Co.*,p. 511

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MERGERS.

The dissolution of two New York corporations is sought by merging them into a New Jersey Corporation. No agreement of merger and consolidation has been adopted by the companies as required by the New Jersey statute and as is proposed. The Board is without authority to approve the proposed merger. *Application of the Knickerbocker Ice Co., Ice Manufacturing Co. and Interborough Ice Co. for approval of mergerp. 16*

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Agreement under consideration provides for the issuance of capital stock of the consolidated company in the amount of \$69,000 to be given in exchange for the capital stock of the Freehold Gas Light Co. Should such issue be made, it would be necessary to set up a suspense account to be written off later, which the Board deems inadvisable. The Board announces its willingness to approve a consolidation agreement based upon stock issue of \$59,000, instead of \$69,000 as proposed. *Application for approval of agreement of merger and consolidation, Freehold Gas Light Co. and Standard Gas Co.,....p. 504*

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It is claimed that the "Public Utility Act" having conferred upon the Board the power to fix rates, the contractual obligations assumed by the petitioner toward the City of Burlington with respect to rates are not binding upon the Board and it may allow increased rates asked for. The Board agrees that the power of municipalities to provide by contract with public utilities respecting rates is subject to the power of the Board to fix rates and that ordinance provisions contravening this power must give way. The Board is unwilling to relieve a utility which, with all the deliberation necessitated by a compliance with the statute from which it derives its being, enters into a contract from the self-imposed limitations of the contract. *Application of Burlington Sewerage Co. for approval of a new schedule of rates*.....p. 420

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rect exercise by the municipality of any power reserved to it. *City of Trenton vs. Trenton and Mercer County Traction Corporation*p. 549

RAILROADS—CROSSINGS.

The Board concludes that a condition of danger exists at the crossing of Grant Avenue, Kearny, and the track of the Newark Branch of the Erie Railroad warranting an order directing additional protection at the crossing. *Town of Kearny vs. Erie Railroad Co.*,p. 85

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A railroad company is ordered to provide and keep in repair a suitable and convenient wagonway across its track. *Ebert Brothers vs. West Jersey and Seashore Railroad Co.*,p. 484

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vided. *Application of Lehigh Valley Railroad Co. for permission to construct an additional track at grade over North Broad Street in the Township of Hillside, Union County*.....p. 586

A proposed new crossing at grade is to cross the track of a street railway. The Street Railway Company should be required to look to the railroad company only to assume the obligation of the former and the railroad company, in turn, if the shipbuilding company will agree, should look to be indemnified therein. *Application of West Jersey and Seashore Railroad Co. for permission to construct crossing at grade on Charles Street and across Water Street, Gloucester* p. 588

RAILROADS—STATIONS.

The Board would not be warranted in requiring change in the location of a station for a purpose which involves convenience, merely, when more urgent matters, involving safety probably would be postponed. A railroad company should have convenient and safe approaches to its stations. A stairway upon which snow and ice are allowed to accumulate is not safe, adequate and proper service. It is shown that an approach to a freight house is difficult and that it is inconvenient to back wagons to the door of the freight house because of a steep grade. A suitable approach should be made and level surface provided. *Township of Acquackanonk vs. Erie Railroad Co.*,p. 9

The additional expenditure necessary to make the changes in track and signal system and for the construction of the new station to meet the desires of the petitioners could not be reasonably required in view of what under the conditions would be the probable use of the station. It does not appear to the Board that the number of passengers who would use a station at West Side Avenue, if the same is established, would be sufficiently large to justify the Board at this time in issuing an order which would interfere with the high speed service now maintained between Harrison, Manhattan Transfer and Summit Avenue, Jersey City. *Manufacturers and Property Interests Association, et al. vs. Pennsylvania Railroad Co., et al.*p. 46

In view of what appears to be the overwhelming demand on the part of the people of the Borough, and the failure on the part of the objectors to show that adequacy or safety of service will be reduced by the change, permission to relocate station is granted. *Application of the New York Central and Hudson River Railroad Co. for permission to relocate station at Dumont*p. 272

Where there is little use for a station and the advantage to be derived from its discontinuance far outweighs slight inconvenience to a few persons, permission for such discontinuance will be granted. *Application of West Jersey and Seashore Railroad Co. for permission to discontinue passenger service at Leonards*p. 473

Proper station facilities in connection with the maintenance of the station at West Wildwood should include the issuance of tickets to said point, affixing to the station building the name of West Wildwood, also issuance of time-tables showing station and trains scheduled to stop and flag stops. *Wildwood Extension Realty Co. vs. Wildwood and Delaware Bay Short Line Railroad Co., et al.*p. 514

The Board specifies additional signal protection to make safer conditions at a railroad station. *Investigation of accident at Kingsland Station on the Delaware, Lackawanna and Western Railroad*p. 580

RATES—GAS COMPANIES.

The Board considers it unreasonable to require payment of a full month's minimum charge where a customer begins his relations with the company a few days before the meter reading date. *Wildwood Gas Co. In re discontinuance of service*p. 276

In determining cost to reproduce property of a gas utility an allowance is made for expenses incurred in connection with the purchase and holding of land until such time as the plant is put in operation. Deductions are made for cost of plant capacity built in excess of reasonable requirements of the communities served. Unused services equal to an excess of 15% beyond the number of meters in use held to be reasonable and their value allowed. Allowances are made for organization and legal expenses and for "development expense," including cost of advertising, soliciting and demonstration. Allowance is refused for unearned depreciation covering period prior to purchase of plants by the company; the plants having been taken over at their value at the time. *Township of Mantua, et al. vs. New Jersey Gas Co.*.....p. 289

RATES—ELECTRIC COMPANIES.

Complaint is made that an electric utility requires that current from motor generating set used for lighting shall be paid for at lighting rates. The Board holds that to allow the complainant to obtain lighting service at power rates would be

an unjust and unreasonable discrimination against other users. *Bell Electric Motor Co. vs. Public Service Electric Co.*,p. 3

In disapproving a schedule increasing rates the Board holds that an insufficiency of return does not indicate, under the circumstances, that the existing rates are unjustly and unreasonably low, but rather that there is a want of a reasonable degree of development even under the existing rates, which can be accounted for by the long continued inefficient operation and service. *In re Schedule of rates for electricity, Newton Gas and Electric Co.*,p. 102

A municipal ordinance directed removal by an electric utility of overhead wires and cables and provided for an underground system. The company adopted a rule requiring customers to pay the entire cost of the conduit and cable from the curb line into the building; the cost of the cable terminal inside the customer's premises and the cost of the main line switch and cut-out with its enclosing iron box. This is held to be an unreasonable rule. *Isaac Stein, et al. vs. Consolidated Gas Co. of N. J.*.....p. 436

RATES—EXPRESS COMPANIES.

Rates on shipments of milk by American Express Co. between Pennington and Jersey City not shown to be unreasonable. *Thomas F. Logan, et al. vs. Central Railroad Co. of N. J., et al.*p. 38

RATES—RAILROADS.

Complainants, shippers of milk do not appear to be entitled to have shipments transported in baggage cars attached to passenger trains at the existing freight rate. *Thomas F. Logan, et al. vs. Central Railroad Co. of N. J., et al.*p. 38

An agreement between two railroad companies fixing a rate of fare would not prevent the Board from fixing a lower rate if the rate fixed by the agreement should appear to be unreasonable. *Manufacturers and Property Interests Association, et al. vs. Pennsylvania Railroad Co., et al.*p. 46

The Board finds and determines that the rates on ice in carloads on the line of the Delaware, Lackawanna and Western Railroad within the State of New Jersey of 50 cents per ton in box cars and 55 cents per ton in ice cars are just and reasonable. Increase in these rates is disapproved. *Mountain Ice Co. vs. Delaware, Lackawanna and Western Railroad Co.* p. 176

Rates on sand from Whippany to consuming points on the Delaware, Lackawanna and Western Railroad held not to be unjustly discriminatory nor unreasonable, per se. *Whippany Sand Co., et al, vs. Delaware, Lackawanna and Western Railroad Co., et al.*p. 214

Rate on scrap iron held to be unjust and unreasonable and lower rate fixed. *David Kaufman and Sons Co. vs. Delaware, Lackawanna and Western Railroad Co.*.....p. 418

In considering this case the Board does not deem it necessary and therefore does not determine the question of its power to require a railroad to charge a fare less than ten cents. Assuming that the Board has such power, it is unable to conclude upon the facts stipulated in the case that a lower fare should be imposed. *Township of Woodbridge vs. Public Service Railroad Co.*.....p. 440

Complainants allege an excessive charge on shipments of berries from Elm, on the New Jersey Southern Division of the Central Railroad of New Jersey, to Jersey City. The Board finds that the berry trade demands fast service and that this is furnished, that the revenue derived is not excessive and that a comparison with other rates does not indicate that the rates complained of are unreasonable. *National League of Commission Merchants, et al. vs. Central Railroad Co. of N. J.*.....p. 462

RATES—SEWER COMPANIES.

Application for an increase in rates beyond those fixed by a contract with a municipality denied. It does not appear that denial of the increase will involve such loss and hardship as to make it impossible for the company to render safe, adequate and proper service. Nor does the question of discrimination arise. *Application of the Burlington Sewerage Co. for approval of a New Schedule of Rates.*.....p. 420

See alsop. 426

Complaint of unreasonable and discriminatory charge for service in that no reduction is made for hotel closed from October to May is not upheld. The ordinance of the municipality gives the company the right to charge for the whole year without rebate for or on account of disconnection or non-use by the owner or lessee of the property for a portion of the year. The Board assumes that this affected the council in fixing the rates and was also a reason impelling the company to accept the ordinance. *Ostend Realty Co. vs. Atlantic City Sewer Co.*.....p. 456

RATES—STREET RAILWAYS.

To hold that the business school pupil of school age shall be denied the right to the same rate of fare as other children of school age is to discriminate against him. To hold that he shall be denied this right because he pays for an education during the years of his school age, the more quickly to befit himself for a useful occupation, is in effect to penalize him for doing the thing, without expense to the State, that the State aims to do in pursuance of its public policy. *In the matter of discontinuance by Public Service Railway Co. of sale of tickets at a reduced rate for transportation of pupils in attendance at and travelling to and from schools over its several lines*p. 93

The Board finds that the increase which would result from withdrawal from sale of six tickets for twenty-five cents is not just and reasonable and disapproves the same. *Proposed withdrawal from sale of six tickets for twenty-five cents by The Trenton and Mercer County Traction Corporation*.....p. 141

The practice of charging a ten-cent fare to the Edgewater Ferry to passengers taking cars of the Palisade Line to Cliffside Park while transferring passengers to the second fare zone to that ferry is held to be unreasonable and unjustly discriminatory. The denial of transportation to passengers taking said cars in Cliffside Park for a single fare to their nearest ferry at Edgewater is a failure to render such passengers proper and adequate transportation facilities. *Men's Club of Gantwood, et al. vs. Public Service Railway Co.*p. 168

The Board concludes that the practice of charging passengers from Bradley Beach an extra five-cent fare to points along the line of Cookman Avenue in Asbury Park is unjust and unreasonable and concludes also that the practice of so charging while permitting passengers from Roseld Avenue, Deal and Allenhurst to go over its lines to any part of Asbury Park is unduly and unjustly discriminatory. *Bradley Beach vs. Atlantic Coast Electric Railway Co.*p. 370

Board's order in this matter set aside on appeal. *See Decision Supreme Court*p. 377

The Board finds that the rates of fare charged by a street railway are insufficient and do not afford a reasonable return. *Application of the New Jersey and Pennsylvania Traction Co. for advance in passenger fares and re-adjustment of fare zones between Trenton, Lawrenceville and Princeton*.....p. 531

RATES—TELEPHONE COMPANIES.

A telephone company is permitted to file a schedule of rates showing increases, it appearing that an improved service is to be afforded. *In the matter of proposed increase in rates of the Hackettstown Telegraph and Telephone Co.*.....p. 411

RATES—WATER COMPANIES.

Rates charged, without reference to cost, must not exceed the value of the service, and if the value of this may be determined by comparison with the rates charged by other companies a rate of 35c. per thousand gallons appears to be excessive. *In re new schedule of rates for metered service—Bound Brook Water Co.*.....p. 81

Consideration must be given to the respective revenues derived from fire protection and from private consumers. Both the investment and the operating and fixed expenses must be properly allocated to the two purposes. *In re new schedule of rates for metered service—Bound Brook Water Co.*.....p. 81

The practice of the company requiring the consumer to pay for the installation of service pipe within the public streets and the stop cock is disapproved as an improper and unreasonable charge. *Samuel M. Gilmore vs. Hackensack Water Co.*p. 138

The Board concludes that a schedule of rates proposed by a water utility is not just and reasonable and suggests a schedule to be filed. *Board of Education, Wharton vs. Robert F. Oram*p. 384

In this proceeding there is involved consideration of a minimum rate for water supplied through one inch and larger taps. The testimony shows that a number of those supplied with water use it for irrigation, fire protection or other purposes which involve a large use at certain periods and no use at all at other periods. The result of this is to impose upon the company certain fixed charges which justify a higher minimum. The Board finds the rate proposed by the company too high and fixes as reasonable a schedule of "stand-by" charges. *Application of Delaware River Water Company for approval of proposed increase in rates*.....p. 490

If the territory served by the Commonwealth Water Company should be treated as claimed by the company as one district with uniform rates established throughout, then this Board should not pass judgment on the schedule submitted unless the municipality of West Orange is included therein, and all the necessary and proper details concerning the water com-

pany's property therein are considered in this hearing and the Town of Irvington is legally placed in the same group. At this time one is excluded and the other claims to be excluded by virtue of an existing legal contract. *Application of Commonwealth Water Co. for approval of proposed new schedule of rates and rules*.....p. 563

RESOLUTIONS. See ORDINANCES AND RESOLUTIONS OF MUNICIPALITIES.

SALES OF UTILITIES TO MUNICIPALITIES. See MUNICIPALITIES.

SCHOOL CHILDREN, TRANSPORTATION OF AT REDUCED RATES. See RATES—STREET RAILWAYS.

SECURITIES.

The Board is of the opinion that \$100,000, par value 6%, second mortgage bonds, to be redeemed at par by the use of net corporate income up to \$10,000 per year, until the amount is reduced to \$50,000 and thereafter at not less than 2% per annum, should yield more than 80% of par. *Application of Salem and Penns-Grove Traction Co. for approval of ordinances, mortgages and securities*p. 157

Utility applying for approval of issue of securities required to set up accrued depreciation account and to amortize discount on bonds. *Application New Jersey Power and Light Co., et als. to issue securities, etc.*.....p. 369

Proposed issue of securities by a railroad company approved on condition that the company agrees to comply with the provisions of the requirements of the Board's order approving the same. *Application of Erie Railroad Co. for approval of issue of bonds under its general mortgage dated April 1st, 1903*p. 406

Issue of stock by a telephone company is approved to the amount of \$12,000 to pay for property purchased and to make extensions. *Application of Delaware and Atlantic Telegraph and Telephone Co. for approval of sale of property and issuance of capital stock*p. 411

Projects which involve the harnessing of natural resources should be capitalized so that the public secures advantage and the promoters should be allowed such sum for the collocation of the water power as reasonably represents a return for vision and enterprise. The general public must be permitted to share in values so ascertained. *Application of Ocean City Electric Co. for approval of issue of stock*.....p. 430

Application is made for approval of a proposed issue of bonds in the sum of \$225,000 at 85 and of \$100,000 of stock at par. The Board approves the issuance of stock in the par value of \$75,000 and bonds at 95 in the par value of \$166,500. *Application of the New Jersey Gas and Electric Co. for approval of issue of stock and bonds*.....p. 458 .

Because of the relation between the value of the plant and the total securities and because of the further fact that the approval of this application would increase an already great discrepancy in the relationship between the amounts of stock and bonds outstanding, the Board holds that before additional bonds are issued the property should be put in good order and additions costing at least \$25,000, which should come entirely from the sale of stock, should be made. *Application of the Lambertville Public Service Company for approval of mortgage and issue \$170,000 bonds*.....p. 487

The application before the Board is presented because the same interests control the New Jersey Gas and Electric Company and Lambertville Public Service Company and desire to effect a virtual consolidation. It appears that the two companies are situated some fifty miles apart. The Board holds that the intervening territory could not be considered productive of much business and that the companies are engaged in businesses not related to each other. The fact that one is a gas plant eliminates many of the opportunities for practical economy in management. The petition is dismissed. *Application of the New Jersey Gas and Electric Co. for approval of sale of stock and bonds of the Lambertville Public Service Co. and issue of bonds and stock of New Jersey Gas and Electric Co.*.....p. 495

Approval is granted for proposed issue of securities with the understanding that outstanding capital obligations will be liquidated. *Application of the Standard Gas Co. for approval of a mortgage and issue of bonds and stock*.....p. 507

The Erie Railroad Company is a public utility as defined by the public utility act. Said act is applicable to the mortgaging, disposing of or encumbering by the company of its leasehold interests in the railroads and franchises within this State, and to the issuance of bonds under a mortgage of such leasehold interests. The statute which places a limit of eighty cents on the dollar on the sale of bonds of certain corporations is limited to "A Corporation of This State." The Erie Railroad Company is not a corporation of this State and the limitation imposed by the statute does not extend to that

company. The Board holds that it would not be justified in prescribing as a condition of its approval a minimum price in excess of seventy. *Application of Erie Railroad Company for approval of issue of \$2,380,000 of general lien bonds under its first consolidated mortgage deed, dated December 10th, 1895*p. 518

Application for approval of transfer of capital stock is dismissed, without deciding whether the Board should give its approval to a transfer, the only purpose of which is to secure its control by a holding company to support additional issues of securities which will indirectly be a burden on the New Jersey Company. The Board would want to be satisfied that the result of such transfer would not be to intermingle the management and liabilities of the New Jersey and Pennsylvania companies in such a way as to make separate operation and supervision impossible. *Application of New Jersey and Pennsylvania Traction Company for authority to transfer 10,000 shares of capital stock to Pennsylvania-New Jersey Power and Light Co.*.....p. 535

The present application seeks formal approval of the transfer of securities and permission to set up a "property abandoned" account. Approval is given on condition that certain shares of stock are surrendered for cancellation. *Application of the New Jersey and Pennsylvania Traction Company for permission to open upon its books a "property abandoned" account and for the approval of the sale of certain of its securities*p. 538

Inasmuch as the capitalization of the New Jersey and Pennsylvania Traction Company has been adjusted to accord with the Board's views and the independent operation of the company will not be altered or its financial status disadvantageously affected by the transfer of its stock the Board concludes that no reason appears for withholding its approval. *Application of the New Jersey and Pennsylvania Traction Co. for authority to transfer upon its books 5,000 shares of its capital stock to the Bucks County Interurban Railway Co.*p. 539

The Board finding that the present value of property in excess of outstanding capitalization is \$40,000 an approval of the issuance of capital stock in the amount of \$40,000 will be authorized. *Application of the Long Branch Swer Co. for permission to issue \$63,700 capital stock*.....p. 585

SERVICE—GAS COMPANIES.

Extension of service held to be reasonable and practicable and same is ordered. *Albert J. Glenum vs. Public Service Gas Co.*p. 126

On petition to fix a lighting standard for gas the Board finds that the increased use of gas because of its heating value has been so great in the past twenty years as to change the relative conditions under which gas is used. The quantity of gas used because of its heating value ranges somewhere between 80% and 90% of the whole. To impose upon the users of 80% of the gas an increased burden, due to an increased cost of manufacture, amounting to from eight to fifteen cents per M. cu. ft. would be unjust and unreasonable. This is especially true where it is found there are satisfactory substitutes for the flat flame burners which result in large savings to those who depend upon gas for illumination. *Inhabitants of City of Trenton vs. Public Service Gas Company* p. 232

The printing of a rule on the back of a bill is not sufficient notice when the company proposes to discontinue service. Company should give at least three days' notice in writing of its intention to discontinue service, before service is discontinued. *Wildwood Gas Co. In re Notice of Discontinuance of Service*p. 276

SERVICE—RAILROADS. See also RAILROADS—STATIONS.

The law contemplates that orders of the Board affecting service afforded by railroad companies shall be based on evidence reasonably supporting the same. In this proceeding it does not appear that the Board would be justified in finding that the railroad company fails to provide adequate service between the points under consideration. *In re train service of the Pennsylvania Railroad Co. between Trenton and Long Branch and Intermediate stations*p. 7

The Board finds that changes should be made in the passenger train schedule on the Greenwood Lake Division of the Erie Railroad and orders the same. *Chester L. Hall, et als, vs. Erie Railroad Co.*p. 19

For more than twenty-five years deliveries of freight have been made at North Grassy Sound. The north side of Grassy Sound has been built up largely by reason of that fact. It would require testimony of substantially changed conditions or other new factors to justify discontinuance of the practice. Adequate and proper service requires resumption of the practice of delivering service to the north side of Gassy Sound. *W. T. Royds vs. West Jersey and Seashore Railroad Co.*.....p. 282

Assuming that a stipulation in a deed conveying lands for right of way under which the Wildwood and Delaware Bay Short Line Railroad Co. must maintain a station at West Wildwood involves a reasonably adequate train service, such service should depend upon the business offered and expand with the requirements and growth of the community. The Board finds that all local trains should be scheduled to stop at West Wildwood on flag or notice to the conductor. *Wildwood Extension Realty Co. vs. Wildwood and Delaware Bay Short Line Railroad Co., et als*.....p. 514

SERVICE—SEWER COMPANIES.

The rate a sewer company may charge is fixed by ordinance accepted by the company. Applications are made for orders requiring extensions of service. The municipality objects to any increase in the rate. The Board holds that while, in this case it would not be justified in annulling, against the protest of the municipality, the contract under which the company is bound to afford service at its existing rates to those who can be given same, with the distribution system as now constructed, it does not appear that its financial condition is such that the Board can require it to make extensions. *Application of Collingswood Sewerage Company for approval of a new schedule of rates*.....p. 426

SERVICE—STREET RAILWAYS. See also ORDINANCES AND RESOLUTIONS.

Street railway company ordered to place a brick pavement in Branchport Ave., Long Branch, between its rails and eighteen inches on either side thereof. *In re non-completion of recommendations made to Monmouth County Electric Co. concerning roadbed in Long Branch*.....p. 32

A portion of the track of a street railway, admittedly being in bad condition and the utility claiming that defects could be corrected without track replacement and that such correction would be immediately undertaken, no order was entered by the Board. Should the corporation fail to do the work proposed without delay, or should it appear that the work does not fulfill the corporation's claims, the matter will be re-opened and further consideration given to the question of replacement of the track. *Inspector's report on condition of track of Trenton and Mercer County Traction Corporation on West State St. in the City of Trenton*.....p. 43

The law of the State imposes on every street railway company the duty to keep in repair to the satisfaction of the local authorities the paving or surface material of the portions of

streets occupied by its tracks and if the tracks occupy unpaved streets, then, in addition, to keep in repair eighteen inches on each side of the portion of the street occupied by its tracks.

Borough of Red Bank vs. Monmouth County Electric Co......p. 159

Street railway company is ordered to improve conditions at station. *David C. Leonard vs. Jersey Central Traction Co.*.....p. 461

The lawfully constituted governing bodies of the municipalities in which a skip-stop plan is in operation are unanimous in demanding that through traffic shall be subject to all local stops. The Board will respect this sentiment and disapprove the skip-stop plan of operation. *Borough of Verona vs. Public Service Railway Co.*.....p. 544

The Board's power to require a public utility to furnish safe, adequate and proper service is not dependent upon the terms of municipal ordinances. *City of Trenton vs. Trenton and Mercer County Traction Corporation*.....p. 549

Street railway is ordered to replace ties and re-align and re-surface track and put paving in proper condition of repair. *City of Trenton vs. Trenton and Mercer County Traction Corporation*p. 558

SERVICE—TELEPHONE COMPANIES.

Telephone company ordered to supply individual line service.

James E. Brodhead vs. New Jersey Telephone Co......p. 479

SERVICE—WATER COMPANIES.

Water company ordered to supply water to complainant's house, under such conditions that there will always be an adequate supply at the fixtures on the second floor of said house. *Mrs. E. E. Whitney vs. Yantacaw Water Co.*.....p. 128

Complaint is made of insufficient water pressure at Morris Plains. It appears that additions to plant and equipment required to supply the kind of service demanded by the people of Morris Plains should be met largely, if not wholly, by the consumers of that section. In view of the apparent unwillingness of the residents to pay an amount which might be considered a fair return on the investment, the complaint is dismissed. *Edwin Betts vs. Morris Aqueduct Co.*.....p. 180

The term "service connection" does not refer to extensions or mains, but is limited to installation of service from a public street or road to property abutting thereon. The Board concludes that the Hackensack Water Company should take upon itself the burden of maintaining all such connections as lie within the public streets up to and including the stop cock. *Samuel M. Gillmore vs. Hackensack Water Co.*.....p. 138

Water company is ordered to read consumers' meters at least once in every three months, and to render statements of readings within five days of the same. *In the matter of reading meters and rendering bills, Delaware River Water Co.*.....p. 282

Water company is directed to continue service notwithstanding refusal to pay a disputed bill. *W. H. Armour vs. Yantacaw Water Co.*.....p. 358

A water company failing to afford proper service the Board will look favorably upon the entrance into the field of any other water company having necessary legal right. *Water Commissioners of Delawanna, District No. 2, vs. Yantacaw Water Co.*p. 366

An individual is supplying water as a public utility. The Board recommends that he associate with himself the proper number of persons and ask municipal permission to form a water company. *Board of Education, Borough of Wharton vs. Robert F. Oram.*.....p. 384

The Board finds that the General Water Supply Company should establish, construct and maintain an extension of its existing facilities. *Township Committee of Haddon Township vs. The General Water Supply Co.*.....p. 475

Complaint was made that a water company refused to supply service, claiming that the same should be supplied by another company operating in the municipality. Investigation showing the two companies to have equal franchise rights and that service could be afforded more economically by the respondent it is held that it should supply it. *Bogota Land Co. vs. Hackensack Water Co.*.....p. 500

A water company is ordered to extend its facilities to supply service, the Board fixing conditions deemed to be reasonable. *Mrs. Oliver J. Berryman vs. The Delaware River Water Co.* p. 579

SEWER COMPANIES. See RATES—SEWER COMPANIES AND SERVICE—SEWER COMPANIES.

SKIP STOPS. See SERVICE—STREET RAILWAYS.

STOCK, APPROVAL OF ISSUES OF. See SECURITIES.

TAXES, COMPROMISE AND SETTLEMENT OF.

The Board is asked to compromise and settle arrears of taxes of a railroad company, it being claimed that the assessments were made in error and that this was not discovered until the time for appeal had passed. The Board finds that the taxes

should be compromised within the intent of the Legislature,
and fixes a sum to be paid as a proper compromise and
settlement. *Application of Wildwood and Delaware Bay
Short Line Railroad for a compromise and settlement of the
arrears of taxes due from said railroad to the State of New
Jersey*p. 498

TELEPHONE COMPANIES. See RATES AND SERVICE.

WATER COMPANIES. See RATES AND SERVICE.

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